A
0
0
1
3
7
2
1
7
2
5
SOUTHERN REGIONAL LIBRARY FACILITY

Harper's Small Books

THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
LOS ANGELES

THE CAMP ON FIRE.

HARPER'S STORY BOOKS.

A SERIES OF NARRATIVES, DIALOGUES, BIOGRAPHIES, AND TALES,
FOR THE INSTRUCTION AND ENTERTAINMENT
OF THE YOUNG.

BY

JACOB ABBOTT.

Embellished with

NUMEROUS AND BEAUTIFUL ENGRAVINGS.

1854

Entered, according to Act of Congress, in the year one thousand eight hundred and fifty-four, by

HARPER & BROTHERS,

in the Clerk's Office of the District Court of the Southern District of New York.

JUDGE JUSTIN;

OR,

THE LITTLE COURT OF MORNINGDALE.

NEW YORK:
HARPER & BROTHERS, PUBLISHERS.

Entered, according to Act of Congress, in the year one thousand eight hundred and fifty-seven, by

HARPER & BROTHERS,

in the Clerk's Office of the District Court of the Southern District of New York.

PS
1000
A8j

PREFACE.

THE disputes and contentions which arise among boys in their intercourse with each other, in school or at play, though very different in respect to the subjects of them, are very analogous in nature to those that occur among men in the serious business of life, and are to be settled on substantially the same principles. There are not many companies of boys that would be capable of organizing and managing a court, as Justin did at Morningdale, for boys generally have not sufficient self-control to conduct such proceedings in a quiet and orderly manner. It is not impossible, however, that some of the readers of these reports may make the experiment, and, at any rate, it is certain that all who read them attentively, and in a thoughtful manner, will learn from them a great deal in respect to the principles of natural justice and right, and will be better able to guard against the danger of getting into needless quarrels themselves, and also to assist in settling the disputes of others, after the perusal than before.

622808

CONTENTS.

CHAPTER		PAGE
I.	THE COURT	13
II.	AN ALIBI	33
III.	THE PHILOPENE	45
IV.	BARGAIN NOT CONCLUDED	53
V.	ONE THING AT A TIME	70
VI.	STILL ONE THING AT A TIME	81
VII.	THE HATCHET QUESTION SETTLED	89
VIII.	CONFESSION	109
IX.	INSUBORDINATION	129

ENGRAVINGS.

PAGE

CAMP ON FIRE ..... *Frontispiece.*
THE FIRST JURY 29
THE FISHING-POLE IN BROADWAY 57
SEIZING A HATCHET 83
THE SQUIRREL CAUGHT 98
HOW IT WAS DONE 121
THE PORTAGE 139

JUDGE JUSTIN.

I.

THE COURT.

Judge Justin's court. The school of Morningdale. The play-grounds.

THE little court, the proceedings of which are to be reported in this volume, pertained to a school of boys which was established in a very pretty little valley forming a branch of the valley of the Bronx, a few miles above New York, on the route of the Harlem Rail-road. The name of the school, which was derived from the name of the valley in which it was situated, was Morningdale.

The school was kept in a large and old-fashioned stone house, which was half buried under the foliage of the trees and shrubbery that surrounded it. There were attached to it a great many outbuildings, some of which were used for farming purposes connected with the lands belonging to the school, and others for shops, play-rooms, and the like, for the boys. There was an extensive range of ornamental grounds about the house, with many wide gravel walks, and avenues of trees, and summer-houses. Here and there, also, swings, and gymnastic poles, and other such contrivances were set up in places convenient for the boys to use them. One of the swings was in a very pretty little grove of trees.

The mountains. Rattlesnakes in the woods. The way to the Hudson River.

The valley opened toward the east, so that it took the morning sun in a very cheerful and pleasant manner, and this was perhaps the reason why it had received the name of Morningdale.

On the northern side of the grounds connected with the school there extended a region of rocky and mountainous land covered with forests. There were roads leading in various directions in among these mountains, but where they led to the boys did not know, for they had never been to the end of them.

There were also a great many wild and solitary paths through this wilderness, though the boys seldom went far into them, and they never went there alone. There was a tradition that in former years rattlesnakes had lived there, in the holes among the rocks, and although none of the boys had ever seen one of these reptiles, and though they generally, when talking on the subject with new comers, stoutly denied that there were any there, still they could not play in those woods with any comfort, and they, therefore, seldom went there except in large companies. They always went well armed with clubs, too, and they walked very warily, and at every rustling that they heard they stopped to listen, thinking that it might be the sound of a rattle.

As the valley opened toward the east, the head of it was toward the west, that is, toward the North River, which was distant only a few miles from Morningdale. There was a good road in that direction, which led, winding up the valley, to a beautiful country on the height of the land, and thence down to the river. The boys used often to go by that road when they wished to go to New York by the steam-boat. The distance to the steam-boat landing

was about eight miles, and the road was a very pleasant one to travel.

There was also another broad and pretty road, which led, in a winding way, down from Morningdale to the valley of the Bronx, and thence to the rail-road station. Thus the boys had two ways of going to New York, one by the steam-boat on the North River, and the other by the Harlem Rail-road. Indeed, there were three ways; for they might, if they chose, when they reached the steam-boat landing on the river, proceed by the Hudson River Rail-road. There was a station on that road very near the landing.

Dr. Mather, who was the proprietor and principal of the Morningdale school, kept several horses and carriages for the use of his family and of the boys. There was one horse that was kept harnessed all the time into a light wagon for doing errands. This horse and wagon were sent almost every day to the station in order to bring up boxes and parcels, which came there by the trains, for Dr. Mather or for the boys. On his way back from the station, the boy who drove this wagon stopped at the post-office in the village for the letters. He had a leather bag to bring them in.

There was a very pretty brook running through the Morningdale valley, and for a considerable distance this brook flowed through the grounds of the school. In one place on this brook there was a dam, which Dr. Mather had caused to be built in order to make a pond for the boys. This pond answered several very important purposes. The boys kept ducks and geese upon it, and sometimes other aquatic birds. They also fished in it, though the larger boys generally preferred to fish in the Bronx.

Swimming, boating, and skating. The rule about pocket-money.

They sometimes bathed in it, especially in the early part of the summer, for the water became warm enough for bathing in the pond some time before it did in the river. They sailed boats and rafts in it in all seasons of the year, except in the winter, and then they derived a still greater degree of pleasure from it by skating on the ice.

This pond was very pretty, as well as very convenient for the boys' uses. It was of a winding and irregular form, and the banks of it were very picturesque. The lines of the shore were varied with many capes, bays, and projecting headlands, and there were wharves and harbors here and there which the bays had formed. The banks were shaded, too, very prettily with trees and shrubberies, and there were a great many pleasant walks along the margin of them.

There was one custom established at this school, which it is necessary to explain, in order that the reports of the trials contained in this volume may be better understood, and that was in relation to the boys' pocket-money. The rule was that every boy was to receive from his father, during the time that he remained in the school, twenty-five cents per week, neither more nor less, for pocket-money. The sons of the richest men were not allowed to have any more, nor were those whose parents were not so rich to have any less. This was an express stipulation which Dr. Mather made with every parent when his son was admitted to the school. If the parent would not consent to this, Dr. Mather would not receive the boy.

This money, too, was not to be sent to the boys from their par-

Three reasons why Dr. Mather made the rule.

ents at home, nor to be brought with them when they came, but Dr. Mather himself paid it to them every week, and then, at the end of the quarter, charged the amount in the bill. Thus he kept the question of pocket-money wholly under his own control.

There were various reasons which led Dr. Mather to adopt this plan. In the first place, he did not wish to have any of the boys in his school dashing about among the others with their pockets full of money, which their foolish fathers and mothers had given them, and assuming great airs and pretensions over the other scholars on that account, as such boys often do. He thought it much better that all the boys of the school should be on a more equal footing in this respect.

Then he considered it an important part of a boy's education that he should learn something about the value of money, the difficulty of earning it, and the advantages of prudence and economy in the employment of it. These things he knew very well that a boy could never learn so long as his father and mother kept his pockets continually full; so he required the amount that they were to receive to be limited to a definite though sufficiently liberal sum, and thus afforded the boys the means of acquiring experience and skill in the proper management of it.

There was another reason still for adopting this plan, which was, perhaps, not less important than the other two. Dr. Mather wished to adopt the system of *fines*, as punishments of petty misdemeanors and breaches of order among the boys, and he saw very plainly that such a system could never be made to work equally or justly unless the resources of the boys in respect to money

were equal. He thought that if, in the first instance, he limited the amount that the boys could receive from their parents to a moderate sum, equal for all, and then could adopt a system by which this amount could be increased by earnings which the boys might make, or by rewards which they might receive, and, on the other hand, diminished by fines inflicted for punishment, he should be greatly assisted in the government and discipline of the school. His calculations in this respect proved to be perfectly correct. He found that the system worked admirably well.

Most of the boys in the school were under twelve years old. There was, however, one who was over fifteen. His name was Justin. Justin had entered college, and he was spending his first college year at the Morningdale school. This plan is very often adopted when the boy, or, rather, the young man in question, has so good a character that the principal of the school where he fitted for college is willing to allow him to remain. Unless his character is very good indeed, such a boy remaining in a school in the country can do a great deal of mischief. His influence over the other boys is very great on account of his superior age and attainments, and if he chooses to abuse this influence, he leads them into a great deal of evil. Then, moreover, if he is disposed to be disobedient and insubordinate, it is very difficult to manage him; for the methods in use at the school, being adapted to an earlier age, are not suited to his case. Thus it is in his power, if he is so disposed, to make a great deal of trouble.

But Justin was an excellent boy. He was a very superior scholar, and was extremely attentive to all his duties. He was

Justin's character. The origin of the court.

very sober and sedate in his manners, and generally took very little part in the amusements and plays of the younger boys, though he was always ready to help them in any of their undertakings, whenever his assistance was required. He was a great peace-maker too, and took great pleasure in settling the disputes which arose from time to time, especially among the younger boys.

The boys all had great confidence in him, and his decisions were almost universally submitted to without any question. One reason for this was that he always patiently inquired into all the facts of a case before he formed any opinion in relation to it. He waited until he had fully heard the whole story, and both sides of it too, before he made up his mind. Then he seemed never to show any partiality. A little boy, or a new-comer, that nobody had yet formed any friendship for, was heard as patiently, and had his rights as fully considered, in case of any contest, as the oldest and most influential and popular boy in the school.

It was this Justin who was the judge in the court which is to be described in this volume. The manner in which this court was established was somewhat accidental. It happened in this way:

One day, when Justin had been walking a little way in the woods, north of the school-grounds, to practice a declamation, he heard, as he returned through the grounds, the sound of voices coming from a place near the pond, as of boys in altercation. He immediately turned his steps toward the place. It was at a place where a boy named Warner was building a wharf in his harbor on the pond. He had formed the margin of his wharf, both at the

Warner's wharf. The boys appeal to Justin. Silence in the court!

front and at the sides, by driving down strong stakes, and then setting up boards edgewise inside of them. These boards, of course, before being put in, were sawed to the proper length.

After having proceeded so far, Warner concluded to fill up the interior space of his wharf with earth, and then to pave the surface with round stones. This pavement had been begun, and, besides the stones that had been already laid, there was a small pile lying on the grass near which seemed to be ready to be laid. There was also a small wheelbarrow near. The wheelbarrow was empty, and was lying down upon its side.

At the time that Justin came to the place, the work was entirely suspended, and all the boys that were there were engaged in an eager dispute.

As soon as Justin came to the spot, the boys seemed with one accord to turn to him, and all began talking together to explain the case.

"Stop!" said Justin; "all stop! I can't understand the case at all when so many are talking at once."

So the boys stopped talking. Immediately afterward, however, Warner began again, saying,

"I'll tell you all about it, Justin. You see, the boys all agreed—"

"No," said a small boy whom they called Clicket, and who here suddenly interrupted Warner, "no, *I* did not agree."

Immediately a dozen voices broke in again, all clamorous to explain the case.

"Hush!" said Justin. "Silence! silence in the court! I'll tell

you what we will do. We will have a court, and try the case regularly. I'll be the judge."

"Agreed!" said all the boys; "agreed! agreed!"

"I'll be the judge," continued Justin; "and then we shall want a jury besides."

Here there was another burst of vociferation from the boys, all of them wanting to be jurors.

"I'll be jury!" "Let me be jury!" "Me!" "Me!" "Joe and I will be jury." These and similar cries were uttered so eagerly by the boys as to produce a scene of utter confusion.

"Hush!" said Justin. "Silence! None of you can be jury. We must have a jury that don't know any thing about the case."

"Then how can they decide?" said one of the boys.

"They will learn about it by hearing the witnesses," said Justin. "In courts they always take pains to get a jury that have not made up their minds about the case beforehand. It is a great deal better that they should not know any thing about it at all except what they learn from the witnesses."

Here there was another outcry from the boys, all clamoring to be witnesses; but Justin succeeded before long in quieting them again.

"You must not talk at all," said he, "but keep perfectly quiet, or else we can't have any court. I shall tell you exactly what to do."

At a little distance from the place where this scene occurred there were two boys in a boat. Their names were Murray and Jones. There was just a glimpse of them to be seen through

the trees, over an intervening point of land. Justin immediately called to these boys to come that way; and as boys seldom failed to come when Justin called them, Murray and Jones began at once to paddle their boat in that direction.

When the boat came near, Justin told the boys that he wanted them to be jury.

"There is a case to be tried," said he.

"Very well," said Murray; "we'll be jury. What's the case?"

"Sit down where you are, in the boat," said Justin, "and listen."

So Murray and Jones sat down together on one of the thwarts of the boat, and assumed an attitude of great attention.

"Now," said Justin, "which of you boys is it that claims any thing of any other boy?"

"I do," said Warner.

"Then you are plaintiff," said Justin. "And who is it that you claim something of?"

"Of Clicket, there," said Warner, pointing to Clicket.

"Then Clicket is defendant," said Justin. "Nobody must speak except those that I call upon. I'm judge, and it belongs to me to regulate the proceedings.

"And now," continued Justin, "it is the plaintiff's turn to tell his story first, and the jury must listen. But then, gentlemen of the jury," he added, turning to Murray and Jones in the boat, "you must not absolutely believe the plaintiff's account of the affair till you hear what the defendant has got to say."

"Then I don't see what good it will do for me to tell the story,"

The jury should not absolutely believe one side till they have heard the other.

said Warner, somewhat sullenly, "if they are not going to believe me."

"I said they must not believe you *absolutely*," replied Justin, good-naturedly. "That is, they must not consider your account of the matter conclusive until they hear the other side. Don't you think it is a good rule to hear both sides of a story before we make up our minds about it?"

"Why, yes," replied Warner.

"Then you ought to be willing that the rule should be applied in your case. So go on and tell your story, and then we will hear what Clicket has to say on his side."

"Well," said Warner, "I made Clicket a whistle, and he was to wheel me a load of stones in that wheelbarrow for my pavement, and now he won't do it."

"I did not agree to do it," said Clicket, interrupting.

"Stop!" said Justin. "It is not your turn yet. You shall tell your story by-and-by, when Warner has got through."

"Well," said Warner, "the case is just this. I agreed to make the boys some whistles if they would bring me some stones. Every boy was to have a whistle who would bring me one wheelbarrow load of stones. Well, the boys all agreed to it—"

"I did not agree to it," said Clicket.

"Hush!" said Justin. "Wait till your turn comes."

"So I cut down some branches from the willow-tree there," continued Warner, "and made the whistles. I made four, and Clicket had one of them. All the rest of the boys have brought me their loads of stones, but Clicket won't bring me his."

"That is all that you have to say, is it?" said Justin.

"Yes," said Warner.

"Now, then, Clicket, it is your turn," said Justin, turning to Clicket. "What have you to say?"

"Why, I did not agree to any such thing," said Clicket. "He made me a whistle, and I took it, but I did not agree to bring him any stones for it; I can prove that I did not agree to bring any stones."

"Very well," said Justin, "prove it. Who is your witness?"

Clicket appealed to a boy named Moses to confirm what he said, and so Moses was called upon to tell what he knew about the case. Moses came forward and spoke as follows:

"I was here when it began. Warner said that he wanted some stones to finish his pavement, and he said that if any of the boys would go up the brook, to the place where such stones were plenty, and bring him six apiece, he would make each of them a whistle. Two or three of them said they would, but Clicket did not say any thing. I listened particularly. However, Warner made him a whistle, and he took it, but he did not agree to bring him any stones for it."

"Then what business had he to take the whistle?" demanded Warner.

"That's for the jury-boys to consider," said Justin. "All we have to do now is to get the facts of the case all out. Do you think it was so, as Moses says, that Clicket did not positively agree, in so many words, to bring the stones?"

"I don't know that he agreed to it in so many words," said

Warner; "but he took the whistle and blew on it a long while, and he has got it in his pocket now."

Here Clicket pulled the whistle out from his pocket, and threw it toward Warner, saying, in a testy tone,

"Here! take your whistle!"

The whistle fell upon the ground, but nobody picked it up, and so it lay there neglected.

"Well, now, you jury-boys," said Justin, turning to the jury in the boat, "the point is this. You see, it is the duty of the judge to explain what the point is in each case. The point is this: whether Clicket, by taking the whistle, and without saying any thing about the agreement, bound himself to bring the stones; or, had he a right to consider it as a gift to him. You must not consider this case alone, but must take it in connection with other cases on the same principle. If a person takes any thing of value from another person with a certain understanding, does the simple act of taking it on that understanding bind him to it, without any other agreement?"

"*I* think," said Murray, one of the jury-boys, beginning to express his opinion.

"Stop!" said Justin, interrupting him. "You must not give your verdict yet. Wait till you have heard all that the judge has to say. There are a great many cases like this continually happening among men. For instance, suppose a man comes down to the bank of a river where there is a ferry. The ferryman is in his boat, and asks the man if he wishes to cross the ferry. The man says Yes, he should like to cross the ferry well enough. 'Very

well,' says the ferryman: 'jump into the boat, and I will take you over.' So the man gets into the boat, and the ferryman rows him over. When they get to the shore, the ferryman calls for his pay; but the man says that he did not promise to pay him any thing. 'You asked me to get into your boat,' says he, 'and you said that you would row me over; but I did not ask you to do it, and I did not promise to pay you any thing.' Now the question is, Whether, in such a case as that, the man is bound to pay."

"I should think he would be a mean fellow if he would not," said one of the jury.

"Very likely," said Justin; "but that is not exactly the question. It might be mean in a man to refuse to do, in some cases, what, after all, he was not really bound by law to do. The question is, What this man would be *bound* to do. Suppose that the ferryman were to bring him into court, what would the judge and jury decide? Would they say that, as he did not make any agreement in form with the ferryman to be ferried over the river, he could do as he pleased about paying? Or would they say that his getting into the boat and going over was agreement enough—that is, that his taking a passage on the understanding that he was to pay was in fact an agreement on his part that he would pay?

"Or suppose," added Justin, in continuation of his charge to the jury, "suppose that a milkman, in going his rounds, should begin by mistake to leave his milk at the wrong house, and suppose that the woman who lived there should tell her girl not to say a word, but to take the milk every morning. 'Let him leave it here,' says she, 'as long as he pleases. I have not ordered it,

The jury go away in the boat to consider the case.

and so I shall not have any thing to pay.' She lets him go on so till the end of the quarter, and then, when he brings in his bill, she says, 'I don't owe you any thing for this milk, for I did not agree to take it.' The question is what the judge and jury ought to decide."

"I think they would decide," said one of the jury, "that she ought to have told the milkman before."

"Yes; but now it is too late for that," replied Justin. "The milk has been delivered, and is all drunk up, and now the question is whether the woman would be obliged to pay for it. I know how it *would* be, for I have read of such cases in the law-books, but I shall leave it for the jury to consider what they think the decision *ought* to be. So you can consider and decide. If you think that when a person takes a thing of another with the understanding that he is to pay for it, the act of taking it is in itself to be considered as an agreement on his part that he will pay for it, then you must decide in favor of Warner, for Clicket took the whistle with the understanding that he was to bring a wheelbarrow load of stones to pay for it. But if you think, on the other hand, that a person is never bound to pay for an article that he receives, unless he has in so many words agreed that he will pay for it, then you must decide in favor of Clicket, for it is proved that he did not say, in so many words, that he would bring the stones.

"And now," continued Justin, "you must go off in your boat a little way, and talk about it, and see if you both think alike. If you do, you must then come back and tell us what you think.

If you do not, you must come back and tell us that you do not agree."

So Murray and Jones paddled off up the pond a little way, until they were out of hearing, and there held their consultation. Pretty soon they came back, and Murray said that they were agreed.

"We think," said he, "that Clicket ought to bring two wheelbarrow loads of stones; one to pay for the whistle, and the other for damages, on account of having made Warner so much trouble by refusing to bring the stones at first."

Clicket seemed very little disposed to submit to this decision. He said he was willing to bring one wheelbarrow load, if the boys said so, but he did not think it was fair that he should have to bring two.

"I would," said Justin. "You can do it very easily, and it is always best to submit to the laws. Indeed, if I were you, I don't know but that I should bring three loads, or, at any rate, I would put an extra stone in each of the two, so as to give first-rate measure."

Clicket, finding thus that every body was against him, concluded to submit, though he did it rather ungraciously. He brought the two loads of stones, and, just as he came with the last one, the bell rang for supper, and the boys all went up toward the house. Justin lingered behind, so as to talk to Clicket on the way.

"Then you don't think the decision was fair, do you, Clicket?" said he.

"No," answered Clicket, "I don't think it was fair at all."

THE FIRST JURY.

Justin's illustration of the ticket-office.

"Then you don't think," said Justin, "that a person is obliged to pay for what he takes, unless he agrees to in so many words?"

"No," said Clicket, "I don't."

"Did you ever go to the Museum in New York?" said Justin.

"Yes," replied Clicket, "and a nice time I had there."

"How much did you pay?" asked Justin.

"I paid a shilling," said Clicket. "It is twenty-five cents—boys like me half price."

"Well now, Clicket," continued Justin, "suppose you were to go to the Museum again, and, when you came to the door with your shilling in your hand, you should put the shilling down on the little shelf by the window, and the man should take it and put it in the drawer, and then you should ask him for a ticket. The man would say, 'Give me a shilling, and I will give you a ticket;' and you would say to him, 'I just gave you a shilling.' Then he would say, 'You did not give me the shilling for a ticket, you gave it to me for nothing.' Then you would say, 'No, I meant that shilling to pay for a ticket.' Then the man would say, 'I don't care what you meant; you did not *say* it was for a ticket. You gave me the money without saying a word, and I took it and put it in the drawer. I did not agree to give you any thing for it, and so I am not obliged to give you any thing.' Suppose the man were to do so, what should you say?"

"Why, that's a very different thing," said Clicket.

"How is it different?" asked Justin.

"Why, I think it is different altogether," said Clicket.

"I admit that it is different," said Justin, "in that it is about

Cases may be different, yet their principles the same.

the Museum, and a shilling, and a ticket, and the other case is about a wheelbarrow and a load of stones; but the principle seems to me to be the same, though some boys can not see principles very well."

"I don't know what you mean by principles," said Clicket.

"Why, the cases are alike in this," said Justin: "Warner gave you the whistle just as you gave the shilling to the Museum man, and you took the whistle just as the Museum man took your shilling. Nothing was said in either case. There was only an understanding. There was an understanding on Warner's part that you were to give him something in return for that whistle, and there was an understanding on your part that the Museum man was to give you a ticket for your shilling. There was not any thing but an understanding in either case; so that, if the Museum man was bound to give you a ticket, then, on the same principle, you were bound to wheel the load of stones."

As Justin said those words, he and Clicket arrived at the house, and they both went in immediately to supper, so that nothing more was said on the subject at that time. Some of the boys, however, said afterward that they thought it was good fun to have a court, and they told Justin that they wished that he would settle all their disputes in that way.

Justin accordingly established a court, and made rules and regulations, from time to time, for the government of it, so that at length it became quite a well-organized institution. The sessions of it were held in a summer-house. There was a seat for the judge, with a place for the jury on one side, and one for the wit-

nesses on the other. The plaintiff and defendant, with their advisers, if they had any, sat in front. The boys who came as spectators sat on any of the vacant seats, or stood outside, and looked in through the openings that served as windows. The parties might manage their cases themselves, or they might, if they chose, avail themselves of the aid of any of the elder boys. These boys, when thus employed, of course acted the part of counselors at law.

Reports of some of the most important cases that were tried in this court are contained in the subsequent chapters of this volume.

II.

AN ALIBI.

Murray and Jones against *Clicket.*

On the part of Murray and Jones, Murray himself appeared to manage the case. On the part of Clicket, Warner appeared.

The court was opened on Monday afternoon, about an hour before sunset. The bell was rung at the door of the summer-house five minutes before the time of opening the court, as a summons to the parties and witnesses to appear. The judge opened the court by rising in his place and commanding silence.

The judge then called the case, whereupon the clerk of the court rose and read a brief statement of the complaint, which had been prepared for the purpose by Murray, as follows:

We charge Clicket with having burned up our camp in the margin of the wood last Saturday afternoon about two o'clock; and we claim that he should be required to build another. *Signed,* *Murray,*
Jones.

The Judge. Well, Clicket, and what do you say to this charge?

Clicket. I say I did not do it.

The Judge. Then I will appoint a jury to try the case. I appoint Moses and Clark. Come forward, Moses and Clark, and take your places on the jury-bench.

The two jurors thus summoned came forward.

The Judge (*addressing the jury*). Have you heard any thing of this case, so as to have made up your minds whether Clicket did really set fire to the camp or not?

Moses. I have heard some of the boys talking about it, but I have not made up my mind.

Clark. It is the same with me.

The Judge (*addressing Warner*). Have you any objection, Warner, on the part of Clicket, to having these boys for the jury?

Warner (*looking at the boys*). No, we have no objection.

The Judge. Then we will proceed. It is your turn first, Murray. You must bring forward witnesses to prove, if you can, that Clicket burned your camp. Then, afterward, we will hear what Warner has to offer in Clicket's defense.

Murray. The first witness that I have to call is Orville. I want him to tell about our camp.

Here the judge called for Orville. He was outside the summer-house, but on hearing himself called, he came in and took his place on the witness's bench.

Murray. I want you to tell the judge and the jury about my camp.

Orville describes the camp in the woods.

Orville. About its being burned up? I don't know any thing about that.

Murray. No; I mean about the building of it, where it was, and what a good camp it was.

Orville (*turning to the jury*). Well, you see, Murray and Jones built a camp out in the edge of the woods. I helped them build it. It was a first-rate camp. It was in a very good place too, just in the margin of the wood. We did not go very far into the woods, for fear that there might be some snakes there. So we chose a pretty place just beyond the gate, and a little way from the brook, and built the camp there.

Murray. Describe to the judge how the camp was built, and what sort of a camp it was.

Orville. We built it of poles and bushes. We first cut down three small trees to make three poles of. Then we trimmed off the branches of the trees and laid them aside. Then we made small holes in the ground to put the ends of the poles in, and we let the tops of them come together in the middle, so as to make the frame of the roof. The frame was three-sided. There were crotches in the tops of the poles where they came together, and we hooked these crotches into each other, and that fastened the tops of the poles together. Then we took the branches that we had trimmed off from the tree, and set them up against the poles, on the two back sides, and on a part of the front side. We left a part of the front side open for a door.

Murray. Did it make a good camp?

Orville. Yes, it was the best camp that I ever saw.

Murray. What did we have in the camp?

Orville. You had a fire-place made of stones, with an opening above in the roof for the smoke to go out. You had a basket of apples with two plates in it, and also some potatoes; but the potatoes were in a hole, in the back side of the camp.

The Judge. Why were they covered up in that way?

Orville. Why, the boys thought that they would keep better if they were covered up, and there was not room enough for them in the basket.

The Judge. Very well. And now, do you know any thing about the burning of the camp?

Orville. Only what Murray told me.

The Judge. You don't know any thing of your own knowledge?

Orville. No, I do not.

The Judge. Very well; you may go. Who is your next witness, Murray?

Murray. William Livingston.

The judge called Livingston, and he came and took his place at the witnesses' bench.

Murray. I am going to show by this witness what Clicket's motive was in burning up our camp. It was because we gave a verdict against him in the case of the whistle that Warner made for him.

The Judge. Very well; proceed.

Murray. I want you to tell the jury, Livingston, what Clicket said about me and Jones, after the verdict that we gave against him.

Clicket's threat. Clicket was seen with a match going toward the camp.

Livingston. Why, he said it was a shame for you to decide that he must wheel two loads of stones, and that he meant to pay you for it some day or other.

Here Clicket interrupted the proceedings by remarking that he only said that for fun. The judge, however, immediately told him that he must not speak at this stage of the trial, but must wait until the time came for him to make his defense.

Murray. I have nothing more to ask, Livingston.

Warner. But I wish to ask him a question. Can I do it now?

The Judge. Yes, now is the proper time.

Warner. When Clicket said that, did he seem to be angry, or did you think he was in fun?

Livingston. Why, he laughed when he said it.

Warner. He laughed, did he?

Livingston. Yes.

The Judge. And who is your next witness, Murray?

Murray. Homer.

Homer was called to the stand, and gave his testimony as follows:

Homer. All I know about it is that I saw Clicket take a match box out of his room and put in his pocket, and then go out through the back garden toward the woods, just before the camp got on fire.

Murray. What time was it when you saw him do that?

Homer. It was about half past one.

The Judge. How do you happen to know just what time of day it was?

Homer. Why it was just after dinner, and we always get through dinner about half past one o'clock. I went up into my room to get a little basket that I keep to go a raspberrying with. Some of the boys and I had formed a party to go a raspberrying. When I was going into my room I saw that Clicket was in his room, for his door was open. I looked in and asked him what he was doing. He told me that he was getting some matches. I saw, too, that he was taking some matches from a box on the mantle-piece and putting them in a little tin box to carry in his pocket.

The Judge. Did you say any thing to him about the matches?

Homer. I asked him what he was going to do with them, and he said it was a secret.

Murray. And you saw him run off through the back garden with them, toward the gate that leads to where the camp was?

Homer. Yes. He took the matches and ran down stairs. I looked out the window to see where he was going with them, and I saw him running through the garden.

Murray. And is that all that you know?

Homer. That is all I know about Clicket. But afterward I saw the camp on fire.

Murray. Well, tell the jury about that.

Homer. As soon as I had got my basket, I went down by the back shop to the place where I had agreed to meet the boys that were going on the raspberry party. We all went together through the garden, and out through the back gate, and as soon as we came in sight of the camp we saw that it was on fire.

The Judge. Well, go on. Tell us all that happened.

The scene before the burning camp. The defense is an alibi.

Homer. As soon as we saw that the camp was on fire, we ran toward it as fast as we could to see if we could not put it out; but we found it was too late. Just as we got there, I saw a boy running off through the woods down the valley. I thought it was Clicket.

The Judge. What made you think it was Clicket?

Homer. Why, I saw him come that way, and so I supposed that he had been setting the camp on fire, and was now running off.

Murray. Did the boy that you saw look like Clicket?

Homer. I could not see very well. I only got a glimpse of him through the trees. I was in a hurry, for I knew that there was a basket, filled with apples and other things, in there, and I wanted to get it out; so I ran in, and seized the basket, and brought it out, while the other boys waited outside.* That's all I know, only I staid there until the camp was all burned down, and Ogden and some other boys came.

The Judge. Very well. You may go. Have you any more witnesses, Murray?

Murray. No, I think that that's enough to prove that Clicket set the camp on fire.

The Judge. Now, then, Warner, it is your turn. What witnesses have you got on Clicket's side?

Warner. I am going to prove an alibi.† I have got a witness

* See Frontispiece.

† The word *alibi* means *elsewhere*. When a person is charged with any crime, and he shows that he could not have been the one that perpetrated the act by proving that he was in another place at the time, it is called *proving an alibi*.

Dana is called as a witness. Where Clicket was all the time.

to prove that Clicket was not near the camp that afternoon; he was out behind the stone barn all the time, with Barker and Dana, while the camp was set on fire.

The Judge. Very well; who is your witness?

Warner. Dana.

Dana, on being called, took his place at the witnesses' stand, and testified as follows:

Dana. I know that Clicket did not set the camp on fire, because I saw him all the time. You see, Clicket, and I, and James Barker agreed to go a fishing that afternoon, and we agreed to keep it a secret, because we did not want any of the other boys to go with us. We wanted some matches, because we were going to build a little fire on the bank of the brook. So Clicket said he would go up to his room and get some matches, while I went to get my bait-box, and Barker went for a spade. We were going to dig some bait behind the stone barn. So I got my box, and waited there, hid in the asparagus bed, till he and Barker came. Barker came first, with his spade, and we watched there together in the asparagus bed till Clicket came. We saw him come out of the door, and through the gate into the garden. As soon as he came, we turned off toward the stone barn, entirely away from the path that leads to the camp, and Clicket did not go toward the camp at all.

The Judge. How long did you stay behind the barn?

Dana. We staid there about half an hour, digging bait, and then we went down to the river, fishing, and staid there all the afternoon.

The town boy who saw the fire. Jones is called.

Warner. Now tell the jury about that boy that you met on your way to the river.

Dana. We went down to the river by a back path, so that the boys might not see us, and when we had gone part way down we saw one of the town boys come running out of the woods, all out of breath. He said the boys' camp was afire. We asked him if he set it afire, and he said No. He said that he was coming by that way, and saw it burning. We asked him why he did not stop and put it out. He said he was afraid that if the boys saw him there they would think that he set it afire, and so he ran away.

The Judge. How big a boy was it?

Dana. I think he was just about as big as Clicket.

Murray. What was his name?

Dana. I don't know. I have seen him down in the village, but I don't know what his name is.

Warner. That's all I have to prove by Dana.

The Judge. Then, Dana, you can go. Have you any other witnesses, Warner?

Warner. Yes; I want Jones to come.

So Jones was called, and he came forward and took his place on the witnesses' stand.

Warner. I want you to tell the judge, Jones, about your building a fire at the camp last Saturday.

Jones. Well, I built a fire there just before dinner.

The Judge. Just before dinner?

Jones. Yes. You see, we were going to roast some potatoes in

the camp that afternoon, and Murray told me that I had better go and make a fire there before dinner, in order to have a great hot bed of coals and ashes to roast our potatoes in. So I did. I made the fire in the camp, but I made it of large logs, so that it would burn slowly, and not set the camp on fire. Besides that, I brushed up all around the fire, so that there should be nothing to catch along the ground.

Warner. That is all. I have not got any more witnesses to bring.

The Judge. Very well; then the case is closed, except to hear what you and Murray may have to say about it. Murray is to begin.

Murray (*turning to the jury*). I think we have proved pretty well that it must have been Clicket that set the camp on fire. He said he meant to do something to pay us for deciding against him, and to set our camp on fire would be the very thing that he would be most likely to do. Then he went up to his room and got some matches. He says he got them to go a fishing with, and perhaps he did, but he might have set the camp on fire with them too. He might have slipped away from behind the barn while the other boys were digging, and have gone and set the camp on fire. It was not very far, and it would take only a minute to set the fire a going. That's all I have to say.

The Judge. Well, Warner, what have you to say in defense of Clicket?

Warner. It seems to me, gentlemen of the jury, that it is not proved at all that Clicket set the camp on fire. On the contrary,

it is clearly proved that he did not. When he said that he meant to pay Murray and Jones, he laughed, which showed that he was only in fun. Then there is a good reason why he got the matches, and he was with Dana and Barker all the time while the camp was set on fire. Murray says he may have slipped away; but he could not have slipped away without Dana's knowing it, and Dana says he staid there with them digging bait all the time, so that it could not have been he that set the camp on fire. Jones went out there and built a fire before dinner, and probably the camp took fire in some way from that; or perhaps the boy, when he came along and saw the camp, and a fire burning in it, pushed the brands out, and set the camp on fire out of mischief. That is all that I have to say.

The Judge (*addressing the jury*). Now, boys, you have to consider the question and to decide it. The question is just this: Is it proved that Clicket did set the camp on fire? If you think that he did not, or if you think it is doubtful whether he did or not, then you must decide in his favor. A boy ought not to be punished for a wrong unless it is positively proved that he did the wrong, and that is for you to consider. What you are to decide is simply whether he burned the camp, and not what he is to do for damages in case he did. That is for me to decide. It belongs to the judge. The jury have only to decide the fact whether the person did the thing or not that he is charged with. Go out and consult together, and, if you agree in your verdict, come in and tell us what the verdict is. If you do not agree, then, when you come in, tell us that.

So the jury went out and took a little walk together down one of the alleys. Presently they came back into the court again.

The Judge. Have you agreed upon the verdict?

Moses. Yes, we have agreed.

The Judge. What is the verdict?

Moses. He did not do it.

The court was immediately adjourned.

After the trial was closed, Murray and Jones both said that they were well satisfied that Clicket did not set the camp on fire, nor did they believe that the town boy did it. They concluded that the fire must have taken in some way from the logs which Jones kindled on the camp floor in order to get a bed of hot ashes to roast the potatoes in.

III.

THE PHILOPENA.

Mary Mather against *Justin.*

As Justin himself was a party in this case, it was manifestly unsuitable that he should preside as judge. The boys accordingly applied to Warner to take his place.

For Mary Mather, Ogden appeared as counsel. Justin appeared for himself.

The case was introduced by reading the following brief statement:

I claim that Justin owes me a philopena, which he lost to me Tuesday morning.

The Judge. What do you say to that, Justin?

Justin. I claim that she owes *me* the philopena.

The Judge. Then I will appoint a jury to try the case. I name Orville and Clicket. Come forward, gentlemen of the jury, and take your places on the jury's seat.

The jury came forward and took their places, as required by the judge.

The plaintiff beginning at the foundation. The promise.

The Judge. Now, Ogden, bring forward your witnesses on Mary's part, and prove her claim.

Ogden. I shall first prove the philopena bargain.

The Judge. That's right. That will be beginning at the foundation.

Ogden. My first witness is Jenny.

The Judge. Come forward, Jenny, and take your place there (*pointing to the witnesses' stand*), and answer the questions that Ogden will ask you. Don't be afraid.

Jenny. No, I won't be afraid.

Ogden. Well, Jenny, tell the jury about Mary and Justin making a bargain for the philopena.

Jenny. It was Monday evening that they made it. We had some nuts and apples in the parlor. Mary, and I, and my mother were in one corner, sitting together, and Justin came with a double almond which he had just found. He asked Mary if she would have a philopena with him.

Ogden. What did Mary say?

Jenny. At first she said no, but I told Justin *I* would have a philopena with him. He said no, he would rather have it with Mary. So, finally, Mary agreed to it. She took her part of the almond, and Justin kept his, and they both ate them up.

Ogden. Is that all?

Jenny. Yes; then Justin went away.

Ogden. Well, there's one question more, Jenny. What is the rule of the philopena? How is it generally understood?

Jenny. Why, whichever of the two says *Philopena* to the oth-

er the next day, gets a present. If Justin should say philopena to Mary first the next morning, then Mary must make him a present; but if Mary says it first to him, then he must make her a present.

Ogden. Very well; that's all.

The Judge. Who is your next witness, Ogden?

Ogden. Barker.

Barker was then called into court, and testified as follows:

Barker. I heard Mary say philopena to Justin the next morning. She came down the back stairs, and came into the breakfast-room on tiptoe. She told me to hush, and not say a word, because she wanted to philopena Justin as soon as he came in. So she hid behind the door, and when he came in, she philopena'd him. He did not know that she was there till he heard her philopena him.

The Judge. Did he philopena her at the same time?

Barker. No, he did not know that she was there.

Ogden. That is all, gentlemen of the jury. I have proved a philopena bargain was made on Monday night, and that Mary philopena'd Justin Tuesday morning. And now, unless he can prove that he philopena'd her before, he is bound to make her a present.

The Judge. Very well. Justin, it is now your turn.

Justin. I am going to prove, gentlemen of the jury, that I did philopena her before she philopena'd me. My first witness is Jenny.

The Judge. But Jenny has testified already.

Justin. Yes, she was Mary's witness then; but she has got

Jenny is recalled as witness. The trick. Laughing too soon.

some more to tell that is on my side. Jenny, I want you to tell the jury what happened that morning when you first came out of your and Mary's room.

Jenny. When Mary and I were dressed, and were ready to go down stairs, Mary said that she expected that Justin was watching outside the door to philopena her as soon as she should come out; and she told me she wanted me to help her play him a joke. I told her I would. She said then that she was going to slip away down the back stairs, and go into the breakfast-room, and watch there for Justin, in order to philopena him first; and as soon as she was gone, I was to open her door a little way, so as to make Justin, who was out in the entry, think that she was coming out. He'll say philopena then, said she, and will think he is philopenaing me; and you must shut the door again quick, and not let him see you, so that he will really think it was me.

The Judge. Well, did you do all that?

Jenny. Yes, we did. Mary went out by another door, and went down the back stairs. As soon as she had had time to get down, I began to open the door of the chamber very carefully, as if I was coming out slyly. Immediately Justin, who was in the entry, called out philopena, and I shut the door as quick as I could; so he thought he had philopena'd Mary, but he did not; he only philopena'd me.

Here there was a general laugh in the court-room and among the by-standers.

Justin. The people are laughing too soon, for I have not yet finished my case.

The Judge. Well, then, go on with it. Call the next witness.

Justin. My next witness is Jones. Come to the stand, Jones, and tell the jury where you were, and what you observed at the time these things were taking place.

Jones. I was in the entry, at the foot of the stairs that morning, just before breakfast, and I saw Mary coming along on tiptoe from the back entry. She made a sign to me not to speak, so I stood still and listened.

The Judge. What did you listen for?

Jones. Why, Justin had gone up stairs a moment before, to be ready to philopena Mary as soon as she should come out of her room; so I listened to hear what he would do, now that Mary had come down stairs the back way.

Justin. Well, and what did you hear?

Jones. I heard you say philopena up in the upper entry.

Justin. Did you hear me say it distinctly?

Jones. Yes, I heard you very plain indeed.

Justin. Was Mary near you at the time?

Jones. Yes, she was creeping along on tiptoe, just going into the breakfast-room.

Justin. Do you think she heard me say philopena?

Jones. Yes, I am sure she did. She could not have helped hearing, you spoke it so loud and plain. Besides, as soon as she heard it, she looked to me and laughed.

Justin. Very well, that is all. I have no other witness to call. I think I have proved that I philopena'd Mary before she did me.

The Judge. Very well. Then the evidence is closed, and now the jury will hear whatever either of you have to say about the case, before they give their verdict. Ogden, it is your turn first to speak on Mary's behalf.

Ogden (*addressing the jury*). It seems to me, gentlemen of the jury, that it is proved clearly that Mary philopena'd Justin first. It is proved that Justin called out philopena up stairs when the door was open, supposing that Mary was there. But Mary was not there. It was only Jenny; so that he said philopena, not to Mary, but to Jenny. It is not enough for a person to say philopena merely, but he must say it to the right person; but Justin, in this case, said it to the wrong person. He meant to have said it to Mary, for he thought it was Mary that was opening the door. But it was not Mary; it was Jenny; and so his saying philopena to her went for nothing, and her philopenaing him was the first. That's all I have to say.

The Judge. Now, Justin, it is your turn, if *you* have any thing to say.

Justin. I think, gentlemen of the jury, when you come to consider the subject, you will be satisfied that my saying philopena up stairs was really philopenaing Mary, and I will tell you why I think so. It is true that the person that was opening the door was Jenny, and not Mary, but in saying the word, I did not speak to Jenny, I spoke to Mary; and I have proved that Mary heard it, for she was down stairs at the time, very near Jones, who heard it himself, and who says that Mary, too, must have heard it. The only thing is, she was in a different place from what I supposed.

But that makes no difference. I spoke it to her, and she heard it, and that is enough. That's all I have to say.

The Judge. Gentlemen of the jury, you must now consider this case and decide it. There is no question about the facts. Justin said philopena when Jenny opened the door. He thought it was Mary that opened the door, and so he directed his voice toward her, that is, Jenny. The intention of his mind was directed to Mary, who was down stairs, though he did not know it. Thus he directed his voice to one person, while the intent of his mind was toward another person who was within his hearing. Now the question is, Who did he speak to? to Jenny or to Mary? For it is admitted on all hands that unless, in saying philopena, he really said it to Mary, it goes for nothing. That is the simple point you have to determine. If you think he said philopena to Jenny, then you must decide that he owes Mary a present. If you think he said it to Mary, then you must decide that Mary owes him a present."

The jury then retired, and, after walking about and talking together for a considerable time in the adjoining alleys of the garden, they came back into the court.

The parties to the trial and the by-standers seemed to listen with a great deal of interest for their decision.

The Judge. Gentlemen of the jury, are you agreed upon your verdict?

A Juryman. We have not agreed. One of us thinks that Justin did philopena her, and the other thinks he did not.

The Judge. And you can not possibly agree?

The jury could not agree. The judge's suggestion.

The Juror. No, we can not agree at all.

The Judge. Then the case can not be decided by this trial. There must either be a new trial, by way of making another attempt to settle the case by a jury, or the parties must compromise it.

Ogden. How can they compromise it?

The Judge. There are two ways of compromising it. Justin and Mary might agree each to give the other a present, or they might give it up entirely, and neither of them have one. Ogden said that he was much obliged to the judge for his suggestion, and remarked that he would consult with his client, and decide whether to call for a new trial or submit to a compromise.

Whereupon the court adjourned.

There was a great deal of conversation in respect to this case among the boys after the trial, and opinions were very much divided in respect to it. The case was finally compromised.

IV.

BARGAIN NOT CONCLUDED.

Ogden against *Warner.*

JUDGE JUSTIN on the bench. Each of the parties appeared for himself.

The Judge. Which of you is plaintiff?

Ogden. I am plaintiff. (*Producing a paper.*) This is my statement of the case.

The clerk read the statement of the case, as follows:

I claim a fishing-pole as mine which Warner has and will not give me.

The Judge. Well, Ogden, it is your turn first. Proceed with your proof.

Ogden. I wish first to prove that the fishing-pole was mine, and that I valued it very much. Warner pretends that he bought it of me, but that is for him to prove after I have proved that it was originally mine.

The Judge. Yes, that will be the right way of proceeding. You must begin with your witnesses.

Ogden. My first witness is Clicket. Come forward, Clicket, and give your evidence.

Clicket relates the purchase of the fishing-rod.

Clicket came forward and took his stand at the place appropriated to the witnesses.

Ogden. Well, now, go on, Clicket, and tell all about my getting this fishing-pole in New York.

Clicket. It was about ten days ago that you bought it. You and I got leave—

The Judge. Tell the story to the jury, Clicket, and not to Ogden.

Clicket (*turning to the jury*). Ogden and I got leave to go to New York Saturday afternoon. We ran off immediately after dinner, so as to catch the two o'clock train. I wanted Ogden to be my horse going down, so that we could go faster, but he would not; however, we had plenty of time, for we got there ten minutes before the train came along.

The Judge. But, Clicket, this has nothing to do with the fishing-pole. You need not tell the jury all the particulars about your going to New York.

Clicket. I am coming to the pole pretty soon. When we got to New York, we got out at Twenty-seventh Street, because I wanted to walk down Broadway. At first Ogden thought we had better go on to Canal Street, but at last he agreed to get out at Twenty-seventh Street.

The Judge. But, Clicket, all this has nothing to do with the fishing-pole. You must come to the point.

Clicket. I am coming to it as fast as I can. I can't come to it till we get down to the Battery, because Ogden did not buy the pole till after we got there.

The Judge. Very well; then come to the Battery at once, and tell us about buying the pole.

Clicket. I will. When we got to the Battery, we stopped there a little while to look at the ships. Pretty soon we began to walk along the piers on the North River side. We saw some men loading a ship with grain. They had a horse to hoist the loads up, and we stopped a while to look at them. I'll tell you just how they did it.

The Judge. We don't want to know how they did it, Clicket. This is not the right time nor place to tell these long stories. We are trying a case now about a fishing-pole. We want to hear about that, and nothing else. You must come right to the point.

Clicket. Very well. That I'll do. We were walking along somewhere about pier No. 7 or 8; I rather think it was No. 8.

The Judge. It is of no consequence what number it was, Clicket. Go on with the story.

Clicket. We saw a parcel of reed-poles leaning up against a store, where there were some sailors standing about. Says I to Ogden, Do you suppose those fishing-poles are for sale? Yes, says Ogden to me, of course; every thing in New York is for sale. Says I, They are grand long fishing-poles. Says he, Yes, and I have a great mind to buy one. Says I, If you should buy one, you could not get it home. Yes, says he, I could take it with me in the cars. Don't you think the train is long enough? I told him Yes, but I thought he had better buy a jointed fishing-pole, for that he could take to pieces and shut up in a little bundle that he could take under his arm. But he said he did not like the

jointed fishing-poles. The joints, he said, were always getting out of order. Sometimes they were so loose that they would not hold together at all, and sometimes they were so tight that you could not get them apart. He had rather have one good reed-pole, he said, than a dozen jointed ones.

The Judge. Never mind all that conversation. Did he buy a pole?

Clicket. Yes, he bought a pole, and gave twenty-five cents for it, and we brought it home.

The Judge. That's all we want to know. Why could not you have told us that in the first instance?

Clicket (*looking puzzled*). Why, I came to it as quick as I could. (*Laughter in the court.*)

Ogden. That is all I have to prove by this witness, so you may go, Clicket.

Warner. Let him stay a moment; I want to cross-examine him a little.* You say, Clicket, that you and Ogden brought the pole home. I should like to know *how* you brought it home.

Clicket. I'll tell you how. We brought it up into Broadway, and carried it about with us wherever we went for a little while, but we found that was very troublesome, for the pole was continually knocking against the people that we met; and, besides, Og-

* Whenever a party brings a witness into court and has finished the examination of him, the other party is entitled to ask him questions too, with a view of learning more particularly about some of the facts, or of ascertaining, by questioning him closely, whether he is telling the truth. This second questioning by the party which did not bring the witness in is called the *cross-examination.* The questioning by the party that did bring the witness in is called the *examination in chief.*

THE FISHING-POLE IN BROADWAY.

den was afraid it would get split. So we carried it to the station, and gave it to a man there, and told him if he would take care of it for us till the seven o'clock train we would give him three cents, or an orange, whichever he pleased. He said he had rather have the three cents and buy his own oranges. So we agreed to give him three cents and went away. (*Turning to the Judge.*) Shall I tell them about what we did the rest of the afternoon?

The Judge. No, no; tell them only what you did at seven o'clock to bring the pole home.

Clicket. We went to the station a good while before the time, because Ogden thought that we might have some trouble with the fishing-pole. We found the man that we had given it to, and he gave it back to us, and we gave him the three cents. Now, says I, Ogden, how are you going to carry it? Are you going to put it in the baggage-car? No, says he, the baggage-car is not long enough to take it in. So we went to the baggage-car and measured, and found the pole was a great deal too long. Could you not put it on the top? says I. No, says he, there's no way to fasten it there. Then, says I, we must stand on the platform all the way, and hold it upright. No, says he, because, in that case, when we pass under a bridge or through a tunnel, the top would strike, and so be broken off. Then, says I, we must hold it crosswise. No, says he, for then, when we go over a bridge, both ends would strike against the timbers. Then, says I, I don't see what you will do. I don't see any other way. Ogden said there were two or three other ways. One way, said he, would be to slide it in under the cars; but he did not like to do that, because the man would not

How Ogden did not bring the pole. How he did.

let him crawl under to tie it there; and then, besides, there would not be time to untie it and take it away when the train stopped for them to get out. He said a better way than that would be for him and me to go with it to the last car in the train, and stand with it on the platform behind, and hold it there, just as if we were fishing from the stern of a vessel. But he said he did not like that way very well. Another way he thought of was to carry the pole into the car, and lay it along on the tops of the seats, close under the windows; but he was afraid to put it there for fear that somebody might come in and undertake to turn the back of some seat, without seeing that the pole was there, and so split it.

The Judge. But, Clicket, we don't want to hear about all these ways in which you did *not* bring the pole. What we want to know is how you *did* bring it. Come right to the point at once, and tell us how you did bring it.

Clicket. I'll tell you. This was the way: Ogden took a piece of twine that he had in his pocket, and cut it in two, so as to make two strings. Then he gave me one, and took the other himself. I went with my string to one of the windows near the front end of the car—the longest car in the train. I let my string out of the window, and Ogden, who stood outside with the pole, tied the end of the string round the pole pretty near the big end. Then I drew the string in, so as to bring the big end of the pole up to the side of the car, close under the window. Then I shut down the window upon the string, so as to hold it there. Now, says Ogden, go to the other end of the car, and we'll fasten

the other end of the pole there in the same way. So we did. We had time to do all this, for we were so early that there were very few people in the cars. Then, when we had it all done, Ogden took his seat by one of the windows, where a string came in, and I took my seat at the other, and so we were by the pole all the way.

The Judge. And how did you manage in getting the pole off when the train stopped at our station?

Clicket. Why, we had our knives all ready as soon as we got upon the platform, and I went to one end of the pole and Ogden to the other, and we cut the strings both at the same time, and so took the pole away.

Warner. Very well; I have no more questions to ask.

Ogden. Then, Clicket, you may go. The reason, gentlemen of the jury, why I brought this witness in to prove these facts, is not only that you may see that the pole was really mine, but also that you may understand how much trouble I took to get it here, and how much I valued it.

The Judge. Very well; that was very right and proper. Now, Warner, you claim that you bought this pole, I understand.

Warner. Yes, I do.

The Judge. Very well; proceed to prove it.

Warner. My first witness is Moses.

The Judge. Come forward, Moses, and give your evidence.

Warner. I want you to tell the jury, Moses, what you recollect about a bargain I made with Ogden about the fishing-pole.

Moses. It was yesterday afternoon. We were all sitting on a seat near the pond.

A negotiation. The witness should speak to the jury.

The Judge. Whom do you mean by all?

Moses. Ogden, Warner, Barker, and I; and Jenny was playing about pretty near there, by the side of Warner's pier.

The Judge. Was it at Warner's pier where you were at the time?

Moses. Yes; Warner had been setting up a flag-staff near his pier, and now he was making a flag to hoist upon it. Ogden was making a drawing of the seat on the point of land nearly opposite. While they were there, they began to talk about Ogden's swapping his fishing-pole for a pair of compasses that belonged to Warner.

Warner. Who proposed the trade first?

Moses. You did not propose it; Ogden did.

The Judge. Give your answer to the jury, Moses, not to Warner. Warner asks you the questions, but he asks them for the benefit of the jury, for it is they who have this question to decide; so you must address your answer to them.

Moses (*turning to the jury*). Ogden proposed it; at least he said that he would not sell his pole for money, and he did not know of any thing that Warner had that he would exchange it for unless it was his compasses.

Warner. And did I offer him my compasses for it?

Moses. Yes; and he said, Well.

The Judge. And so you understood that the bargain was concluded?

Moses. At any rate, he said Well. He asked Warner where the compasses were. Warner said they were up in his room, and

Ogden asked him to go and get them. He said he would, and he did.

The Judge. He brought them down and gave them to Ogden?

Moses. Yes.

The Judge. And Ogden received them?

Moses. Yes; he took them, looked at them, and put them in his pocket, and then went on with his drawing.

Warner. And now about the pole—tell the judge about his delivering the pole.

Moses. Warner asked him where the pole was, and he told him that it was in the long shed, hung there under a certain beam. Warner asked him if he might go and get it, and Ogden said Yes; so Warner went and got it.

The Judge. You are positive that Ogden distinctly gave Warner leave to go and get the pole, are you, Moses?

Moses. Yes, I am. Warner said, I am going to get it—shall I? and Ogden said Yes.

The Judge. Very well. This looks so far very much like a regular bargain, with the delivery of the property to consummate it. However, we will wait to hear what the other party have to say. Is this all you want of this witness, Warner?

Warner. No; I wish to ask him another question. Tell the jury, Moses, whether any thing was said about the condition that the compasses were in.

Moses. Yes, there was something said about it, but I did not hear it all. One thing was, Warner said the brass was tarnished, but Ogden said he did not care any thing about that; he could

rub it bright again very easily. Warner said, besides, something about the points being dull, and the joints being loose, and Ogden said he did not care any thing about those things either.

Warner. So the jury will please to observe that it was understood at the time that the bargain was made that the compasses were not in very good condition, so that the plaintiff can not disavow the bargain on that account. I have no more questions to ask, and I think I have proved that Ogden sold the fishing-pole to me, and that he got what he bargained for as pay for it.

Ogden. Before this witness goes, I wish to ask him one question, and I also wish the jury to remember the old proverb about one story being good till another is told. I think I can bring forward some evidence that will throw new light upon this transaction. I do not, however, mean at all to impugn Moses's testimony; all that he has said is strictly true, I have no doubt; but there are some other facts that you ought to know before you decide the question. I shall bring forward other witnesses to prove these additional facts; but first I want to ask Moses one question. You said, Moses, I believe, that you did not hear all we said about the condition that the compasses were in?

Moses. Yes, I did say so.

Ogden. What is the reason you did not hear?

Moses. Why, I did not pay much attention.

Ogden. Why did not you pay attention?

Moses. I was busy at the time untangling my kite string, and looking at the pictures in a little story-book that Jenny had there.

Barker's testimony.	The offer.	The reply.

Ogden. So you don't think you heard all the conversation that passed distinctly?

Moses. No, I only heard what I have told you; but I am very sure that all I have told you is true.

Ogden. I have no doubt of it at all. But you may go now, and I wish Barker to come.

Here Moses retired, and Barker took his place on the witness stand.

Ogden. Did you hear Warner offer me his compasses for my fishing-pole?

Barker. Yes, I did.

Ogden. What were you doing at the time? Tell the jury.

Barker. I was looking on to see Ogden draw.

The Judge. And you were listening to the conversation at the same time, I suppose?

Barker. Yes, I was paying particular attention to it.

Ogden. Moses stated that, when Warner made me that offer, I said Well. How did I say it—I mean, in what tone of voice? Did I say it decidedly, as if I meant to settle the question, or in a doubtful tone?

Barker. You said it in a doubtful tone.

The Judge. Are you confident of that, Barker? Because that is a very important point.

Barker. Yes, I am very confident of it, not only because I remember distinctly the tone itself, but also from what he said at the same time.

The Judge. What was it that he said?

Barker. He said perhaps he would, or he rather thought he would, or something of that sort.

Ogden. Well, now, Barker, you heard what Moses said in regard to the conversation that took place between me and Warner in respect to the condition the compasses were in. Was any thing else said besides what Moses repeated?

Barker. Yes; Ogden said that he did not care any thing about the brass being tarnished, because he could easily polish it again, nor about the joint being loose, for he could easily tighten it by turning the screw or hammering the rivet, nor about the points being dull, because he could easily sharpen them. The only thing he cared about, he said, was that the points should be of steel. He said that the points of some compasses were made of iron, and some of steel, and that iron points would not stand at all for nice work. He did not care how dull the points were, he said, if they were only of steel, for he could grind them down and sharpen them himself as fine as needles.

The Judge. What did Warner say to this?

Barker. He asked him how he could tell whether they were of steel or of iron. Ogden said he could tell very easily when he came to see them and examine the points. He could tell by the *kind of dullness.* If the dullness was made by the points having broken off without any bending, that would show that they were of steel; but if the points were bent, that would show they were of iron; so Warner said he would go and get the compasses and let him see.

Ogden. And he brought the compasses down?

Barker. Yes; he went to the house, got the compasses, and brought them down, and handed them to you.

Ogden. Address the jury in your answers.

Barker (*continuing*). He handed them to Ogden.

The Judge. And how did Ogden receive them? What did he say? Be particular in this, because it is a very important point.

Barker. He took them and looked at them, and then handed them to me, and asked me what I thought. I told him I could not tell. Then he took them again, and said that he could not tell very well without his magnifying-glass, and that he could take them up to the house when he went home, and see. So he put them in his pocket. He rather thought they were steel.

Ogden. Now there is one thing more. The other side attempted to prove that I delivered the fishing-pole to Warner by telling him where it was, and authorizing him to go and get it. Relate to the jury what the conversation was in respect to that.

Barker. Warner said that he did not believe but that the fishing-pole was cracked. He said he never knew a reed fishing-pole that had belonged to a boy a week that was not cracked in some joint or other, and generally in two or three joints. So Ogden told him that he might go and get the fishing-pole and see.

The Judge. Very well; and that is all you know about it.

Barker. Yes, except that a little while afterward, when Ogden had finished his drawing, we went up to the house, and there we saw Warner with the fishing-pole, which he said was his. Ogden said No; that the bargain was not concluded; that he had not yet decided to take the compasses. Warner said that he did

After the evidence is all given the parties should be heard.

decide to take them if the points were of steel, and that they were of steel, he said; so it was all settled. Then Ogden said that, before going any farther, he would go to court with the case, and have it decided whether the fishing-pole was already Warner's or not.

Ogden. That is all I have to ask this witness, and I have no other witnesses.

The Judge (*to Warner*). Do you wish to cross-examine this witness?

Warner. No, I believe not.

The Judge. Then the next thing is to hear what the parties have to say to the jury before the jury decide. Ogden, you are plaintiff; it is your turn first.

Ogden. Gentlemen of the jury, I have proved to you that this was my pole. I bought it in New York, and Clicket and I brought it here, and we took a great deal of pains in doing it. It is a valuable pole, and I have no idea of letting it go out of my possession till I have actually sold it. Talking about selling a pole is one thing, and actually concluding the sale of it is another. I maintain that although, in this case, we talked about a trade, and although we have not yet decided not to make it, still, it is not yet concluded, and, until it is concluded, the pole is mine, and I have a right to it; and, accordingly, that you ought to decide that Warner should give it up to me.

The Judge. Well, Warner, what have you to say?

Warner. Gentlemen of the jury, I have proved that we agreed to make this trade, provided that I found the pole not cracked,

and that he found the points of the compasses were of steel. He took the compasses and examined them, and could not deny but that they were of steel; I took the pole and examined it, and found it was not cracked; so, I think, the bargain is all settled.

For, even by his own showing, he is bound to take the compasses if he finds, when he comes to examine them with a microscope, that the points are of steel. If he were to wait till he had examined them, and were really to find that they are of iron, then I confess that he might claim the pole again. But he has not done that; and, even if I give him the pole now, and he finds the points of the compasses are of steel, then I could come to him and claim the pole again, and it makes no difference whether I keep it now or take it then.

The Judge. Ogden, have you any thing more to say? You are entitled to the last word, if you wish it.

Ogden. I wish to say, in regard to the last point that Warner made, that I do not deny that I shall be obliged to give him the pole for the compasses in case, after I examine them, I find the points to be of steel; nor, on the other hand, do I *admit* it. I neither deny it nor admit it. I say nothing about it. We have not come to that yet. The question before this jury is not whether I shall be obliged to give him my pole when I find the points of the compasses are all right, but whether I have already given it to him. That is to say, the question is not whether he will have a right to claim the pole by-and-by, but whether it is his now.

The Judge. Gentlemen of the jury, the question you have to

Was the bargain concluded. The jury decided it was not.

decide is a very simple one. Was the bargain concluded? Did the parties come to a conclusion that they would make this exchange, and did Ogden receive the compasses as his property, delivered to him by Warner, and did he deliver the pole as property that he had conveyed to Warner? Or, were the articles received and delivered only for examination, with a view to decide contingencies on which the consummation of the bargain was to depend? If you think that the bargain was concluded, then you must decide that Warner has a right to keep the pole. If you decide it was not concluded, Ogden is entitled to the possession of the pole until it is, and Warner must give it up to him.

The jury, after retiring for a short time, returned into court, and announced their verdict as follows:

The bargain was not concluded, and Warner must give up the pole.

V.

ONE THING AT A TIME.

Bond against *Clicket.*

JUDGE JUSTIN presiding. For Bond, Orville appeared as counsel; for Clicket, Warner.

The case was opened by the clerk's reading a brief statement of the plaintiff's claim, as follows:

Clicket has got my riding-whip, and I want him to give it back to me.

Signed, Bond.

The Judge. Well, Clicket, what do you say to this?

Clicket. I say I'll give him back his riding-whip as soon as he will give me back my hatchet.

The Judge. Well, Orville, proceed and prove your case.

Orville. My first witness is Barker. Come forward, Barker, and testify.

The Judge. What do you intend to prove by this witness?

Orville. I intend to prove that my client, Bond, had a whip, and that Clicket took it away from him, and has got it now, and won't give it back to him.

The riding excursion on Saturday afternoon.

The Judge. Very well; that will be in order. Go on with the examination of your witness.

Orville. I want you to tell the jury, Barker, about the ride that the boys took last Saturday afternoon, and about Bond's buying a whip.

Barker. The way of it was this: we four boys wanted to go and have a ride—

The Judge (*interrupting*). What four boys?

Barker. Bond, Clicket, Robin, and I. We asked Dr. Mather if we could have his horses. He said we could have two of them, and we must get the other two somewhere else. So we concluded to start with two horses, and go out to Wingate's, and try to get the other two there. We concluded to ride double as far as Wingate's; so Bond got up behind me on one of the horses, and Robin got up behind Clicket on the other.

Warner. Did Bond have his riding-whip then?

Barker. No; he bought it afterward, in the course of his ride. I'll tell the jury about that when I come to it. We had no riding-whip when we set out—nothing but switches. We all had switches. We cut them from a willow tree. When we got to Wingate's we got two other horses, and then we all four rode on.

The Judge. Well, come to the time when Bond bought his whip.

Barker. I'm coming to it now. We rode on till we came to a place where four roads met, and there was a store on the corner. There was a pump before the store, and a trough. We stopped there to water our horses. While we were stopping we saw some

Bond bought a riding-whip at the country store. A mysterious disappearance.

whips hanging at the window of the shop, and Bond said he meant to go in and buy one.

The Judge. What kind of whips were they? Were they long whips, or riding-whips?

Barker. There were both kinds, but the kind that Bond was going to buy was a riding-whip. He said the willow switches were not good for any thing, the ends were so brittle; the only kind of switches that were tough were birch switches. So he gave me the bridle of his horse to hold while he went in to buy the riding-whip. Presently he came out with one that he said he gave ten cents for.

The Judge. What kind of a whip was it?

Barker. It was a sort of cowhide, but pretty small and light. It was a very good kind of a whip.

Orville. Go on, and tell what became of this whip.

Barker. I don't know what became of it at all, only it disappeared, and Clicket said he knew where it was.

Orville. Tell the jury how it disappeared. Tell them all you know about it.

Barker. Why, we stopped at a place where there were some children getting raspberries, and we went into the bushes to get some. We staid there some time. When we came back, the riding-whip was gone. Instead of it, there was a birch switch stuck under the pommel of the saddle, where Bond had left his riding-whip. Bond was quite in trouble when he found that his riding-whip was gone; but presently he saw Clicket laughing, and so he suspected that Clicket had got it, and he did not deny it.

What Clicket said about the lost whip. Searching in vain.

Warner. Did Clicket admit that he had got it?

Barker. No, he did not then; he only laughed. Bond looked all about to see if he could find his whip, and the more he looked the more Clicket laughed. At last Clicket told him that he need not be concerned, for he said if we all got on our horses and rode home, the whip would go home too. At last Bond got tired of looking, and so we all got on our horses and rode home.

The Judge. And is this all you know about it?

Barker. Yes; only that when we got to Wingate's, where we stopped to leave the two horses, Bond demanded of Clicket again that he should give him up his whip, or, at least, tell him where it was.

The Judge. And what did Clicket say?

Barker. Says he, "When you give me back my hatchet, I will give you back your whip." Bond asked him then if he had the whip, but he would not say whether he had it or not, only he said it would be at home by the time they were. "Then," said Bond, "you have got it somewhere about you." "If you think so," said Clicket, "you may search me."

The Judge. And did he search him?

Barker. Yes; he came and felt of his clothes all about, but he could not find any thing of it. He searched Robin, too, in the same way.

The Judge. What made him suspect Robin?

Barker. He thought from his looks that he knew something about it. Besides, Robin went down with Clicket to where the horses were while we were getting the raspberries.

The Judge. And that is all you have to say?

Barker. Yes; that is all.

Warner. I wish to cross-examine this witness before he goes. I wish to examine him more particularly in respect to what was done on the raspberry ground, in order to ascertain whether some one else might not have taken the whip.

The Judge. Very well. Ask your question.

Warner. Give a full account, Barker, of what happened while you were on the raspberry ground.

Barker. We left our horses and went in among the bushes, where we heard some voices of people raspberrying. When we got in we found several people. There was a large girl, and several small girls, and a boy. One of the children had a large tin mug. Clicket said that that would be a nice thing to eat raspberries and milk out of. Robin said we could get some milk very easily, for there was a cow browsing there among the bushes, and Clicket said he could make some spoons out of good thick birch-bark. So we asked the girl if that was their cow. She said it was. Then we asked her if she would sell us that mug half full of milk for two cents, and she said she would. So we milked the dipper half full of milk.

Warner. Who did this milking?

Barker. Clicket did it.

Warner. Well, what happened next?

Barker. After Clicket had half filled the dipper, he and Robin said they would go and get some birch bark, while Bond and I filled up the dipper with raspberries. He said he saw some of

the right kind on a tree growing near where we left the horses. So he and Robin went down there to get some, and it was while he was gone down there to get the birch bark that Bond and I think he hid away the whip; and that's all I know.

The Judge. Well, Orville, proceed now with your case.

Orville. I think, gentlemen of the jury, I have made it very plain by this witness that Clicket really took the whip, and that he knows where it is, if he has not got it himself. I don't know how he contrived to make it disappear so mysteriously. Perhaps he saw somebody going by in the road, and sent it home by them. At any rate, I believe he knows what became of it, and I am going to call him as a witness and require him to tell. So, Clicket, come into court and answer.

Hereupon Clicket came forward from among the by-standers and took his place on the stand.

Orville. I want you to tell the jury, Clicket, what became of that whip.

Warner. Stop a moment. Before my client answers that question, I wish to have the judge say whether or not he is bound to answer it. He *will* answer it, or any other question whatever that is asked him, if the judge requires it.

The Judge. He is not bound to answer the question if the answer would be against himself. I will ask him the question in another form. Do you know, Clicket, of any one besides yourself that took that whip? If you do, tell the jury what they did with it.

Clicket. No, I do not.

No honorable-minded person should refuse to testify in a court of justice.

The Judge. I don't see that we can require him to say any thing more. No person is bound to testify against himself.

Orville. Very well. Then I will dismiss this witness and call Robin. Robin, come forward.

Clicket here retired, and Robin took his place upon the stand.

Orville. Did you go down, Robin, with Clicket after the birch bark, when the boys were in the woods, raspberrying, last Saturday afternoon?

Robin. Yes, I did.

Orville. Did you go to where the horses were tied, or did you only go to the birch tree?

Robin. We went to the horses.

Orville. Did you see Clicket take Bond's riding-whip, and did you see what he did with it?

Robin (*after hesitation*). Yes, I did.

Orville. Then tell the jury what he did with it.

Robin (*hesitating and looking toward the judge*). I had rather not answer that question, if I could help it.

The Judge. Should you criminate yourself in any way by answering it?

Robin. No, I should not, because I did not do any thing about it myself.

The Judge. Then you are bound to answer the question. We are all bound to give testimony in courts of justice, and no honorable-minded person ever refuses to do so.

Robin. I don't refuse to answer it if you say I ought to. It is only on Clicket's account.

Clicket (*outside*). I don't care.

The Judge. Order! Silence among the by-standers! (*To Robin.*) I think you are bound to answer the question.

Robin (*smiling*). Well, the way he did it was this: he hid it under the mane of Bond's horse, and tied it there with some of the hairs, entirely under, out of sight; and so Bond brought his whip home himself on his own horse's neck. (*Laughter among the by-standers.*) When he got home, Clicket went into the barn, after the horse was put up, and took out the whip.

The Judge. And has he got it now?

Robin. I suppose he has.

Orville. Now, gentlemen of the jury, I think my case is made out. We will hear, however, what they have to say on the other side.

The Judge. Proceed now, Warner, and call the witnesses for the defense.

Warner. The first witness I have to call is Solomon.

The Judge. Come forward, Solomon.

Solomon takes his place upon the stand.

Warner. Do you recollect, Solomon, being in the woods near the Bronx River when the boys had a fire, last week, on a Wednesday afternoon?

Solomon. Yes.

Orville. I should like to know what they are going to prove by this witness.

The Judge. Well, Warner, what is it that you are going to prove?

Warner. The jury will recollect that one of the witnesses said

that Clicket gave as the reason why he would not give up the whip was that Bond had got his hatchet. Now I wish to show by this witness that Bond has taken away Clicket's hatchet, and won't give it to him; and that's the reason why Clicket keeps his whip, if, indeed, he has got it, which I don't admit, by any means.

Orville. But I maintain that that has nothing to do with this case. Let us suppose that Bond has got Clicket's hatchet, and that he has no right to it, that does not justify Clicket in taking Bond's whip in retaliation. What he ought to do is to bring an action in this court, and have Clicket required to give up the hatchet by a decision of the judge and jury. He has no right to seize property of Bond's himself, without any trial. All the question that is before the court in this trial is whether Clicket has got Bond's whip. Whether Bond has got Clicket's hatchet is another question altogether, and ought to be tried by itself; and I object to their bringing forward any evidence in regard to it now.

The Judge. Well, Warner, what have you to say on this point?

Warner. If I can't bring forward this proof, then I have no witnesses to offer. I can not undertake to prove that Clicket has not got the whip, though I don't admit that he has got it; that is for the jury to decide. But I should like very much to prove that Bond has got his hatchet, as a justification for Clicket, if he really has got his whip.

The Judge. I don't think you can be allowed to do that. Even if you prove that Bond has got Clicket's hatchet, it would be no justification for taking the whip. That is a separate transaction, and, if brought into court at all, must be brought in as a separate case.

Warner. Very well; then I have not any more to say.

The Judge. Orville, have you any remarks to make to the jury?

Orville (*addressing the jury*). I have shown, gentlemen of the jury, very plainly, that the whip in question is my client's property. He bought it, and paid for it, and Clicket has no claim whatever to it. He does not even pretend to have any. I have proved, however, that he has taken the whip, and that he has it now. It is true he has a certain pretext for taking it; but the judge has decided that that pretext is no justification, even if it is true; so that I think you ought to decide by your verdict that Clicket should give up the whip. If he has any complaint to make against Bond about a hatchet, or any thing else, let him bring it into court as an independent question. We will then hear all he has to say about it, and I will defend my client as well as I can.

The Judge. And now, Warner, have you any thing to say?

Warner. Gentlemen of the jury, I will leave the hatchet out of the question, as the judge has decided I must. I will only say now that you will have to consider whether it is really proved that Clicket has got the whip. I maintain that it is not proved. Robin saw him hide it under the horse's mane, it is true, but there is no positive evidence that he took it out again, and, if he did, that is no proof that he has got it now.

The Judge. Gentlemen of the jury, what the counsel for the defendant has just said is perfectly right. All you have to consider is whether Clicket took the riding-whip, and whether he is now responsible for it, and, if he did take it, what he ought now to do. That question you will now proceed to consider and decide.

Verdict for the plaintiff. The black box. Restitution and punishment.

The jury here retired, and, after being absent a few minutes, they returned into court with the verdict, which was as follows:

That Clicket has got the whip, or knows where it is, and that he must give it to Bond immediately, and also put three cents into the black box.

In explanation of the last part of the verdict, it is proper here to say that there was a black box kept at the school, in which the fines that were inflicted upon the boys for their various misdemeanors were put, and once in a fortnight, or once in a month, as the case might be, the money was taken out and expended in some pleasant excursion, in which all the boys took a share—those who had paid the fines as well as the rest. This box was made of ebony, and was accordingly called the black box. It was always kept locked, but there was a slit in the top of it, where the boys who were fined could put in the money.

The fact that the money thus collected in fines was all expended for the public benefit of the boys, had a great influence in preventing any feeling of irritation and ill-humor on their part.

In the cases that were tried in the court, the defendant was sometimes required not only to make restitution to the plaintiff, but he was also fined for the wrong-doing, if there was any wrong-doing involved in the transaction. Among men, these things are kept entirely distinct. A man can not be tried on a civil and criminal suit at the same time; but the court of Morningdale was not yet well systematized, and many practices prevailed in it which would be considered as irregular in ordinary courts of law.

VI.

STILL ONE THING AT A TIME.

Clicket against *Bond.*

JUDGE JUSTIN presiding. Warner appeared as counsel for Clicket, Dana for Bond.

The case was introduced by the following brief statement, drawn up by the counsel for the plaintiff, and read by the clerk:

I accuse Bond of having taken my hatchet away from me, and I claim that he ought to give it up. Signed, Clicket.

The Judge. Well, Bond, what do you say to this?

Bond. I say I have a right to keep the hatchet.

The Judge. Very well; then I will appoint a jury, and we will try the case. I appoint Orville and Otis for jury. Come forward, Orville and Otis, and take your places on the jury bench.

Warner. I do not know but that I ought to object to Orville's being on the jury.

The Judge. Why? What objection have you to make?

Warner. He was the counsel for Bond in the last case that

A juror rejected. The hatchet. How Bond got it.

was tried, and that case was connected with this, so that I am not sure that he can be considered as entirely impartial.

The Judge. I think that is a good objection, so I appoint Barker in his place. Barker and Otis shall be the jury.

The jury took their proper places, and the judge called on Warner to open his case.

Warner. My first witness is Homer.

Homer was hereupon called. He came into court, and gave his testimony as follows.

Warner. I want you to tell the jury what happened last week, Tuesday, between Bond and Clicket in regard to a hatchet.

Homer. Why, Bond got Clicket's hatchet, and ran off with it.

Warner. When was it, and how? Tell the jury all about it.

Homer. We were down by the river fishing, and we had a fire there, and some apples to roast. Clicket had his hatchet there.

The Judge. Are you sure that that hatchet was Clicket's?

Homer. Yes; he bought it with the pocket-money that he had saved up, and he wrote his name on it, too, on the handle, though it afterward got pretty much worn off, and now it is altogether off.

Warner. How came it off?

Homer. Bond rubbed it off with a piece of sand-paper.

Warner. Well, go on. Tell the jury all about the way in which he took the hatchet.

Homer. Clicket had been using it, cutting sticks to put upon the fire. After he had done, he stuck it in a stump. Bond went and took it. Clicket said he might have it, but he must put it

SEIZING A HATCHET.

Clicket's threat. Rules of evidence. Warner cites the case of Bond *vs.* Clicket.

back again; but he said he should not; he said it was his hatchet. Clicket then went to him to take it away from him, and Bond turned round and brandished the hatchet at him to keep him off. Clicket still went on toward him, and then he turned round and ran away.

The Judge. Did Clicket run after him?

Homer. No. He said he would get Warner to be his lawyer, and bring his case into court.

The Judge. That was right. That's the very best thing a boy can do in such a case.

Warner. Well, now, I want you to tell the jury, Homer, what the pretext was that Bond said he had for carrying off the hatchet.

The Judge. Stop a moment. Let me see. I don't know that you can be allowed to show that.

Warner. Why, I want to show that the only reason that Bond had for carrying off the hatchet was that, as he said, Clicket had got his squirrel, and that's no reason at all. We have had a case just like this before. Clicket took Bond's riding-whip, and the reason was, he said, because Bond had got his hatchet; and the judge decided that whether Bond had his hatchet or not, it was no excuse for him to take the riding-whip. Now, in this case, Bond is proved to have taken the hatchet, and I want to show that his reason for it is just the same with that which was decided to be not a good reason before.

The Judge. That is all correct; but then it seems to me that you, as Clicket's counsel, have nothing to do with the pretext

which Bond had for carrying off the hatchet. That's for his counsel to show. You have shown that the hatchet was Clicket's, and that Bond seized it and carried it off. That's enough on your side. It is for them to show what their pretext was, and to prove that it was a good pretext.

Warner. Very well. I will leave it so, then. The jury will remember that this witness states positively that the hatchet was Clicket's, and that he did not give it up to Bond.

Dana. No, I don't understand that he has stated that.

Warner. Then I'll ask him again. How is that, Homer? Did Clicket give the hatchet to Bond?

Homer. He told him that he might have the hatchet to cut sticks, but he must put it back again.

Dana. So it seems he did give it up to him.

Warner. I don't think that's giving it up to him at all.

The Judge. This is not the right time to argue such questions as that. We are examining the witnesses now. You can argue all such points by-and-by, when we have got the facts out. You say, Homer, that Clicket allowed Bond to take the hatchet, enjoining him, however, to bring it back again after he had done cutting sticks with it.

Homer. Yes, that's it.

The Judge. Very well. That's all. Have you any more witnesses, Warner?

Warner. No, I have no more at present.

The Judge. Then, Dana, it is your turn.

Dana. My first witness is Moses.

The defense. The squirrel in exchange for the hatchet.

Warner (*to the judge*). I should like to know, first, what he is going to prove by this witness.

Dana. I am going to prove that Bond had a right to the hatchet.

Warner. He is going to try to prove that Bond had a right to the hatchet, because Clicket had got a squirrel that he said belonged to him, and he ought not to be allowed to prove any such thing. It is no matter if Clicket had got his squirrel; he had no right to retaliate by taking away any thing that belonged to Clicket. He ought to have brought the case into court.

The Judge. Is that so, Dana? Is that what you are going to prove?

Dana. No; I am going to prove that the hatchet belonged to Bond; that he had bought it of Clicket; and that he had a right to take it wherever he found it. In order to prove this, I shall have to go back to something that took place the day before, when the boys caught a squirrel in the margin of the woods. I am going to prove that Clicket sold Bond the hatchet the day before, and so that the hatchet was his. I am not going to prove that he took it in retaliation for Clicket's having his squirrel at all.

The Judge. Can you prove, not only that he sold him the hatchet, but that he also delivered it to him in completion of the sale?

Dana. Why, I think, when he told him that he might take the hatchet off the stump, that was delivering it to him in fact.

The Judge. And that is all the delivery you can prove?

Dana. Yes, that is all.

The Judge. Then I think we have now all the facts to enable the jury to decide, so we will not hear any more witnesses. If the jury think that Clicket *delivered* the hatchet to Bond, then Clicket must prove something else than merely the fact that Bond took it and carried it away to make out his claim to it. But he has not undertaken to prove any thing else; so that, so far as that case is concerned, all depends on whether Bond took it unlawfully, and we seem to have all the evidence that bears on the point.

Dana. Very well; then I have no more witnesses.

The Judge. And now, Warner, what have you got to say to the jury?

Warner. Gentlemen of the jury, it seems to me that this is a very clear case. I have proved that the hatchet was Clicket's, and that it was in his possession; Bond, under some pretext or other —what it is he has not been allowed to show, because, even if it is a good one, it would not justify him in seizing the hatchet out of the former owner's possession without his consent. If he thinks that he bought the hatchet of Clicket, and Clicket is not willing to give it to him, he ought not to take it by violence, but bring an action in this court to recover it.

The Judge. You can now proceed, Dana, if you have any thing to say to the jury.

Dana. Gentlemen of the jury, I admit what the counsel says, that a boy has not a right to possess himself of property by taking it away from any other person violently, even if he is entitled to it; but I maintain that Bond did not take this property away violently. Clicket delivered it to him—that is, he gave him permis-

sion to take it, which is the same thing. It is true, at the time he gave it him, he told him he must bring it back again after he had done cutting sticks; but that was nothing; for if the hatchet was really Bond's, he was not bound to obey any such direction. Therefore, if Clicket claims that the hatchet is his, he must bring forward some other proof of it than merely the fact that Bond took it that day.

The Judge. Gentlemen of the jury, I think the question is presented to you very distinctly by the counsel. The question simply is, whether Clicket's telling Bond that he might take the hatchet, but must bring it back again, was such a delivery of it as would really make it his property, even if he had previously agreed to sell it to him. It seems to me that it was not. He allowed him to take it for a specific purpose, and when that purpose was fully accomplished, the permission would seem to have expired, and the hatchet ought to be returned. If Bond claims the hatchet as his for any other purpose, or in any other sense, his duty was to have given it back after he had finished cutting the wood, and then to have brought an action in this court to compel Clicket to make a full and complete delivery of it.

The jury retired after receiving this charge, and very soon returned with a verdict that Bond must give back the hatchet to Clicket until he can prove in court that Clicket really sold it to him.

VII.

THE HATCHET QUESTION SETTLED.

Bond against *Clicket.*

In this case the claim of Bond to the hatchet, which he had seized from Clicket without right, and been required to restore, was tried on its merits.

Judge Justin presiding. For Bond, Dana appeared; for Clicket, Warner.

The case was introduced, as usual, by the following brief statement of the plaintiff's claim:

I claim that Clicket sold me his hatchet for various good and sufficient considerations, but he will not give it to me.

Signed, Bond.

The Judge. Well, Clicket, what do you say to this?

Clicket. I say I did not sell it to him.

The Judge. Then I appoint Otis and Barker jury.

The jury took their places on the jury bench, and the trial proceeded.

Moses recounts the history of catching the squirrel.

The Judge. It devolves on you, Dana, as the counsel for the plaintiff, to open the case. Who is the first witness?

Dana. Moses.

The Judge. Come forward, Moses, then, and give your evidence.

Dana. Now, Moses, I want you to tell the jury all you know in respect to the squirrel that Clicket and Bond had a difficulty about.

Moses. About the gray squirrel they caught on the other side of the river?

Dana. Yes; that gray squirrel.

Moses. Shall I tell about the time when they first saw him, or when they caught him?

Dana. Tell us first about the time when they first saw him.

Moses. Well, the other day we went off together, Bond, and Clicket, and I—

The Judge. When was it?

Moses. It was last Saturday. We were going a fishing and raspberrying both together. We went along down the road a little way, and then turned into the path that leads into the woods. We followed the path along the edge of the woods, till at last we saw a horse there, and Clicket wanted to catch him and have a ride. Bond said he had better not, because he had not any saddle or bridle. He said he could make any horse go whichever way he pleased by patting his cheek one side or the other with a switch.

The Judge. Has this affair of the horse any thing to do with the difficulty about the squirrel?

Moses (*hesitating*). No—I don't know that it has—any thing particular to do with it.

The Judge. Then pass it by, and come at once to the point.

Moses. Well, we went on till we came to the river, and we walked along on the bank of the river till we came to a place where a boy had a boat, and Clicket and Bond wanted the boy to let them have the boat to go across the river in. He said he would if they would give him sixpence. The boys talked about it some time, and finally they paid the boy sixpence and took the boat.

Dana. I want you to tell the jury, Moses, what they said when they talked about it, and which of them it was that paid the money.

The Judge. Why, Dana, has this any thing to do with the squirrel?

Dana. Yes, your honor; it is very important. The jury will see when they come to hear what it is that I am going to prove.

The Judge. Very well, Moses, go on.

Moses. What they said about paying the expense was this: Bond proposed that they should pay three cents apiece, but Clicket said he had not any money; he had spent all his allowance for the week. So Bond offered to lend him three cents for his share; but Clicket said he did not want to borrow any money, because he always hated so much to pay it when the time came. Then Bond said that he would let him have three cents for *boot* between his trap and Clicket's hatchet.

The Judge. What did he mean by that?

Moses. Why, Clicket had a hatchet, and Bond had a trap—he

had two traps, in fact, and he had been talking of swapping one of them for Clicket's hatchet; but Clicket was not quite willing, and now Bond offered him the three cents to boot.

Dana. And what did Clicket say?

Moses. He said that it was not boot enough, and he did not think he should be willing to do it; and then Bond said that he would pay the whole six cents for the boat, and then have all the fish and all the raspberries that they got on the other side of the river; for he said if he paid all the expenses of the boat, he ought to have all the benefit that they should get by going across.

Dana. Very well; and what did Clicket say to that?

Moses. He said he could not quite decide which to do, but he would do one or the other. If Bond would pay the whole sixpence, so that they could have the boat to go across, he would either let him have all that they got on the other side, or else he would give him the hatchet for the trap, without asking him any thing more to boot.

Dana. The jury will see now why I wished to prove this conversation. I want them to remember particularly that Clicket agreed that if Bond would hire the boat, he, that is, Bond, should have all that they got by going across, or else that he should have Clicket's hatchet in exchange for a certain trap of his, without any other boot.

The Judge. And did Bond pay the money for the boat?

Moses. Yes, he paid the money, and the boy let us have the boat.

The Judge. Did they pay the boy beforehand, that is, when

The boat paid for. Warner's interruption. Moses's story continued.

they took the boat, or did they promise to pay when they came back?

Moses. They paid him beforehand. The boy would not let them have the boat unless they paid him beforehand, because, he said, he should not be there when they came back. So Bond paid him the money.

Dana. Well, now, go on and tell the jury about the squirrel. It is no matter about the fishing or the raspberrying. Come as quick as you can to what happened about the squirrel.

Moses. We took the boat and went across the river—

Warner (*interrupting*). I should like to ask a question here.

The Judge. It will be more convenient for you to reserve your questions till the time for the cross-examination comes. Let Dana go on and bring out all the facts that he wants to prove, and then you can ask any questions you choose when the time comes for the cross-examination.

Dana. Go on, then, Moses, and tell about the squirrel.

Moses. We went across the river, and then sailed along by the opposite bank till we came to the place where Clicket thought there was a good chance to fish. After the boys had fished there a while, they sent me into the edge of the woods, by the side of the hill, to see if there were any raspberries there. I found a place where the raspberries were pretty thick. So I called them, and they laid down their fishing-poles on a bank and came. We staid some time among the bushes. At last Clicket and I, who were pretty near together, heard Bond calling us to come there quick, as if he had found something. We ran as fast as we could,

The boys meet a gray squirrel in the woods.

and when we got there, we asked him what it was. He said it was a large gray squirrel, and he showed us a log among the bushes that the squirrel had run under. Bond said he had no doubt but that he had a hole there. While we were looking at the place where Bond said the squirrel had gone down, and were watching to see whether he would come out again, suddenly Clicket saw him on the other end of the log.

Dana. And what did you do then?

Moses. Clicket told us all to keep still and see where he would go. He said we would watch and see where he would go, and so find out where his hole was, and then set a trap for him.

The Judge. It was Clicket, was it, who made that proposition first?

Moses. Yes; he said it in a whisper, so as not to frighten the squirrel. The squirrel looked at us a minute, and then ran up the stem of a little tree till he reached one of the branches, and then jumped across to a large rock that was near. When he got to the top of the rock he turned round and looked at us again.

Dana. Very well; and what did you do?

Moses. We crept along after him so as to watch him, but we took care not to go too near. Presently he ran down off the rock on the other side to the end of another log, and he ran along the log till he came to a fence. (*Turning to the judge.*) Shall I tell them all the places he went to?

The Judge. Oh no, that is not necessary. Tell us what the end of it was.

Moses. Well, the end of it was that he went to his hole. His

To whom does a squirrel belong, the boy that sees him first or the boy that catches him.

hole was in an old tree. There was a hole in the tree up some way from the ground.

Dana. Well, what happened then?

Moses. Why, Bond said he meant to come and set a trap for him, and he told Clicket to remember it was his squirrel.

The Judge. What did Clicket say to that?

Moses. He told Bond that it was not his squirrel. It is not your squirrel, said he, any more than it is mine.

Dana. What did Bond say to that?

Moses. He said it was his, because he saw him first.

Warner. And what did Clicket say to that?

Moses. He said that squirrels in the woods did not belong to those that saw them first, but to those that caught them. Well, says Bond, I am going to catch him. Clicket then said that Bond might catch him if he could, and if he did, the squirrel would be his.

The Judge. And is that all about it?

Moses. Yes, that is all that happened then. We staid there some time watching for the squirrel, but he did not come out; so, after a while, we came back to the river again, and took the boat and came home.

The Judge. Is this all you have to prove by this witness, Dana?

Dana. Yes, that is all.

The Judge. Now, Warner, if you wish to cross-examine the witness, you can.

Warner. You say, Moses, that one of the agreements proposed to be made was that Bond, in consideration of his paying the

whole sixpence, was to have all the fish and all the raspberries that they should get on the other side.

Moses. Yes, that was one of the plans.

Warner. Was any thing said about his having any thing else besides the raspberries and the fishes?

Moses. No, there was not any thing else mentioned, because we did not expect to get any thing else.

The Judge. What was the exact agreement, Moses? Was it for the raspberries and fishes, or was it for all you should get, whatever it might be? What was the precise language?

Moses. One time they said raspberries and fishes, and another time they said all that they should get.

Warner. Did Bond have all the raspberries and the fishes that were got?

Moses. Why, we did not get any.

Warner. Did not get any?

Moses. No, not to bring home. We did not catch any fishes at all, and all the raspberries we got we ate up there.

Warner. Very well. That is all I have to ask.

The Judge. Have you any more questions to ask, Dana?

Dana. No, not of this witness. My next witness is Barker.

Barker was here called forward, and was examined as follows:

Dana. Tell the jury, Barker, about Clicket's catching the squirrel.

Barker. Saturday night Clicket told me that he and Bond had seen a squirrel in the woods, and that they were both going to set traps for it, and he wanted me to help him set his trap. I told

him he had not got any trap. He said that he had a trap of Bond's that he was talking of buying of him. He was going to give him his hatchet for it, he said.

The Judge. Did he say positively that he was going to do it?

Barker. He said he was going to do it, or was thinking of it, or something of that kind. I don't think he said that he had fully decided upon it. However, he had the trap in his possession, and he wanted me to help him mend it, and then go with it on Monday morning and help him set it; and he asked me not to tell Bond any thing about our going.

Dana. And did you think it was fair to go secretly in that way and catch the squirrel away from Bond?

Barker. I did not think much about it, but I did not suppose there was any thing unfair in it. I understood that they both saw the squirrel together, and that either of them had a right to catch him, whichever could get his trap set first.

Dana. Very well. Go on with your account.

Barker. I helped Clicket mend the trap, and put it all in good order on Saturday night. Monday morning early we went off to set it.

The Judge. How did you get across the river?

Barker. We went round by the bridge. Clicket said we had better go that way, although it was a little farther, because he thought it was doubtful whether we could get a boat. We started very early, before any of the boys were up, so as to get back before breakfast. Clicket had some trouble in finding the place, but at last he found it, and we set the trap. At noon we went to see

THE SQUIRREL CAUGHT.

The squirrel caught. Clicket does not want the trap.

if we had caught the squirrel, and we found that we had; so we took him in the trap and brought him up home. On the way home we met Bond and another boy going down with another trap, which he was carrying to set for the squirrel.

Dana. What did Bond say to you?

Barker. He said we had no right to catch that squirrel, for it was his; and Clicket told him it was not his unless he caught it.

Dana. That is all I have to ask of this witness.

The Judge. What became of the squirrel finally?

Barker. Clicket and I kept him a day or two, when he got away.

Dana. I have one question more to ask. While you and Clicket had the squirrel, did Bond ever claim him as his?

Barker. Yes, he claimed him several times.

The Judge. On what ground did he claim him?

Barker. Why, he said that he saw him first and was going to set a trap for him; and, besides that, Clicket had agreed that if he would pay the sixpence, he should have all that they got by going across the river.

Warner. What did Clicket say to that?

Barker. He said they did not get the squirrel by going across the river. They only *saw* him; but Bond said that that was what led to taking him, and that he was entitled to all the advantages they got by going across the river, and this was one of them, and that if Clicket would not let him have the squirrel, he was bound to give him his hatchet in exchange for the trap. Clicket said he did not want the trap.

The Judge. And so they could not agree?

Barker. No, they could not agree at all.

The Judge. Is this your last witness, Dana?

Dana. No, I have one more. It is Murray.

The Judge. What do you intend to prove by Murray?

Dana. I want to show the jury what became of the trap.

The Judge. Very well. Come forward, Murray, and answer the questions.

Dana. Do you know of Clicket's having a trap that belonged to Bond?

Murray. Yes, I saw him bringing it back from the woods, with a gray squirrel inside of it.

Dana. What became of the trap?

Murray. When the squirrel had been taken out and put in a cage, Clicket gave the trap back to Bond, but he would not take it.

Dana. Why would not he take it?

Murray. He said it was not his any longer. He said that Clicket must keep the trap and give him his hatchet.

Dana. And what did Clicket say to this?

Murray. He said that Bond might take the trap or not, just as he pleased, but that he should not give him his hatchet for it, for the hatchet was worth more.

Dana. That is all, and I have no more witnesses to examine.

The Judge. Now, Warner, it is your turn. If you have any witnesses, you can bring them forward.

Warner. I wish to call Murray.

Dana. I should like to know, your honor, what he is going to prove.

What is the general custom of boys as to ownership of squirrels.

Warner. I want to prove that a boy has no right to a squirrel, or any thing else that he sees in the woods, merely because he sees him, but that such things belong to those that catch them.

Dana. But he can't prove that. That is not a fact to be proved by a witness—it is matter of opinion. That is something for the jury to determine. Homer may think that that is true, and another boy might think differently. I object to having him examined on such a point at all.

Warner. What I am going to prove is not Homer's opinion on the point, but what the general practice is in regard to it among boys. If I were going to ask Homer whether or not *he thought* that a boy was entitled to have a fair chance to catch a squirrel that he saw first in the woods, then I admit that the objection on the other side would be a good one. But I am not going to ask him what he thinks about the point at all, but what the established custom is among boys; and that's a matter of fact, which I can prove by a witness, like any other fact.

Dana. No; it is a matter of opinion after all, and I object to having the witness testify.

Warner. Then the judge must decide between us whether he shall testify or not.

The Judge. I think the witness may be examined, provided Warner confines his questions to the subject of the practice established among boys. The existence of a practice is a fact that may be proved, like the existence of a horse, or of a man, or like any other fact. People may have various opinions about the practice as to whether it is right or not, and those opinions we have noth-

ing to do with; but Warner has a right to show that the practice itself exists if he pleases.

Warner. Tell the jury, then, Murray, what the custom is among boys in regard to squirrels, and such animals that they find in the woods. Has a boy any particular right to such an animal just because he sees him first?

Murray. No; he belongs to the one that catches him.

Warner. Suppose a dozen boys were in the woods, and one of them should see a rabbit, and they should all run after him, and another boy, not the one that first saw him, should catch him, which of them do you think the rabbit would belong to?

Dana. There, you see that he is asking him for his opinion.

Warner. I don't wish you to give your opinion, Murray, as to which you think he *ought to* belong to, but which he would actually belong to, according to the established custom among boys in such cases.

Murray. He would belong to the boy that caught him.

Warner. And so suppose two boys were fishing on the bank of a river, and that one of them should see a fish swimming in the water, and the other should put in his hook and line and catch him, which of them, according to the established custom among boys, would be entitled to claim the fish?

Murray. Certainly the one that caught him.

Warner. Very well. That is all that I wish to ask.

The Judge. Then we have done with this witness, I suppose?

Dana. No, your honor, *I* wish to ask him a question or two. Suppose, Murray, that two boys were fishing on the bank of a riv-

er, and one of them should see a fish swimming in the water, and should tell the others of it, and say that he was going to catch him, would it be considered fair, according to the established custom among boys in such cases, that another boy should run up to the place and put his line in, and so catch the fish away from the boy who first saw him?

Murray. I've seen boys do so.

Dana. Yes, no doubt; and were they considered by the other boys as acting right or wrong?

Murray (*smiling*). I should not exactly like to do it myself.

The Judge. But that is not the question, Murray. The question is not what you would or would not be willing to do yourself, but what would be deemed right, according to the established usages and customs of boys. It is a question of custom.

Murray. I think the boys would generally consider it unfair.

The Judge. Then it is considered that, if a boy sees a fish and announces his intention to try and catch him, he has a right to a fair chance, without any other boys interfering.

Murray. Yes, I think that is the custom.

Dana. And, in the same manner, if a boy sees a squirrel in the woods, and announces his intention to try to catch him, do you think that any other boy has a right to interfere and catch the squirrel away from him?

The Judge. We don't want your own individual opinion about it, but what is the common understanding and practice among boys?

Murray. I think the common understanding is that it is not fair for the other boys to interfere.

Dana. That is all that I have to ask.

The Judge. Very well; and now, Dana, what have you to say before the case goes to the jury?

Dana (*addressing the jury*). Gentlemen of the jury, what I claim in behalf of my client is that Clicket sold him his hatchet, and that, consequently, he ought to deliver it to him.

There has already been one trial growing out of this affair, but in that case the point was entirely different from the one that is raised now, so that you must not let the decision which was rendered then affect your opinion on the present question. In that case, Bond took the hatchet from a stump and claimed that Clicket had delivered it to him. The jury decided that Clicket had not then delivered it to him, and that Bond had no right to seize it. If Clicket refused to give it up, Bond, instead of taking it, was bound, the judge said, to bring an action in this court, to have it decided whether Clicket ought to give it up or not. That is the action which he brings now.

I maintain that Clicket is bound to give up the hatchet on one or the other of two grounds, and he may take his choice of them. You will recollect that when the boys went down to the river, and wished to cross in a boat, Clicket had no money, and so Bond furnished the whole amount necessary for the hire of the boat. He did not intend this as a gift, however. There was an express bargain about it, by which Clicket was, in some way or other, to make a compensation to Bond for his share.

He agreed to do one of two things: either he was to exchange his hatchet for Bond's trap, and receive the three cents, which was

his half of the boat-hire, as the boot, or else he was to let him have all the advantages that should result from using the boat in going across the river.

Warner (*correcting him*). All the fishes and all the raspberries that they should get.

Dana. No; the agreement was for every thing that they should get, whatever it might be. It included all the benefits of every kind which should result from the excursion.

Warner. But I maintain, may it please your honor, that the agreement was only for the fishes and the raspberries.

Dana. The judge must say, then, which it was.

The Judge. According to my recollection of the testimony of the witness, he said that both expressions were used. At one time the language was all the fishes and all the raspberries, and at another, all that they should get, without any limitation in respect to the articles.

Dana. Yes. They specified at one time raspberries and fishes, because those were the principal things that they expected to obtain; indeed, perhaps they were the only things that they expected to obtain; but still the agreement, in its real intent and meaning, was wider, and included every thing, as by right it ought to.

The bargain being thus made, Clicket was bound to execute it in one or the other of the two forms. If he decided to consider his share of the boat-hire which Bond paid for him as boot between the hatchet and the trap, then he was bound to deliver the hatchet, for he received the trap, and he was paid the boot. If, on the contrary, he concluded not to make that bargain, then he

Conclusion of Dana's speech. Commencement of Warner's.

was bound to give up to Bond all the benefits that resulted from the excursion, and the taking of the squirrel was one. Indeed, it was the only one, for the excursion proved to be a failure, so far as raspberries and fishes were concerned.

Now I admit that Clicket had his choice between these alternatives. He might have accepted whichever he pleased. Virtually he did make his choice, for he went over and caught the squirrel, thus appropriating to himself the chief, and, indeed, the only benefit which resulted from the excursion. And now it is too late for him to restore the squirrel, since the little rogue has got away. There is nothing left, then, for him but to fulfill the other branch of the alternative, namely, allow the three cents to be reckoned as boot between the hatchet and the trap, and so keep the trap and give up the hatchet.

In a word, he agreed to do one of two things. He has incapacitated himself from doing one of them. Of course, he is bound to do the other.

Here Dana took his seat, and the judge called upon Warner to address the jury, if he had any thing to say on the other side.

Warner accordingly addressed the jury as follows:

Warner. Gentlemen of the jury, what I have to say is just this. I admit that my client made the agreement that he would do one of two things in regard to the three cents that Bond paid for him in hiring the boat, but I maintain that he has done one of the two things, namely, he let Bond have all the fishes and all the raspberries that they got by going across the river. That is all that

he agreed to do. He did not agree to let him have any squirrels that they might catch; still less did he agree that Clicket should have the exclusive right to catch all that they might see. It is true that one of the forms of the agreement was that Bond should have all that they should get by going across the river; but the witness says expressly that what they meant by that was only the raspberries and the fishes. They did not expect to get any thing else, and so I contend that nothing else was included in the agreement.

Now Bond has had all the fishes and all the raspberries that they got. It is true, they did not get any—that is, they did not catch any fishes, and all the raspberries that they gathered they ate up on the spot. But it was not my client's fault that the expedition resulted in so little. Bond took his chance in respect to that, and now he can not complain.

The amount of it is, as I understand it, that my client was to wait until after the expedition was ended, and then he was to choose whether he would give up all that was got by the expedition to Bond in consideration of his having paid for the boat, or whether he would have his share of the fruits of the expedition, and so pay for his share of the boat by allowing for the amount in a trade between the trap and the hatchet. He accordingly waited to see what the result of the expedition would be; and when he ascertained that point, he decided to give up the avails of it to Bond, and not make the trade for the hatchet. This, it seems to me, he had a perfect right to do.

And that is all that I have to say, only that the squirrel was

not a part of what was got by the excursion, for he was not caught till the next Monday morning.

The Judge. Gentlemen of the jury, the point in this case seems to be whether the right to set a trap for the squirrel, and the chance of catching him, was one of the advantages that was included in the bargain between the boys as a part of "what was got" by the excursion across the river. I have nothing to say on the point in addition to the arguments which have been adduced by the counsel of the parties. You have heard their arguments, and it is for you to decide between them.

The jury now retired to consider their verdict. They were out rather longer than usual. When they returned they said that they were agreed on the verdict, which was, that Clicket must either give Bond the hatchet, or else catch the squirrel for him again, and that he should be allowed three days to catch him.

VIII.

CONFESSION.

Murray against *Sparks.*

JUDGE JUSTIN presided. For Murray, Colman appeared as counsel; for Sparks, Dana.

The case was introduced by the following brief statement, prepared by the counsel for the plaintiff, and read by the clerk:

I accuse Sparks of throwing my cap into the water yesterday afternoon, and I claim that he should pay me ten cents damages for it. Signed, Murray.

The Judge. Well, Sparks, what do you say to this charge?

Sparks. I say I did not throw his cap into the water.

The Judge. Then I will appoint a jury to try the case. I appoint Clicket and Carleton. Come forward, gentlemen of the jury, and take your places.

The jury came forward and took their places on the jury bench, and then the judge called upon the counsel for the plaintiff to proceed.

The confession of the defendant offered as evidence against him.

Colman. Gentlemen of the jury, this case you will find a very simple one, and I think it will be very easily decided. The evidence against Sparks is his own confession; and what better possible evidence can there be against a person than that? I shall prove to you that my client's cap was thrown into the water from off a high bank. I shall prove, moreover, that Sparks acknowledged that he was the one that threw it in. I shall also prove that the injury to the cap, and the inconvenience and trouble that my client was put to in recovering it and drying it, entitle him fully to the damages that he claims, which is ten cents.

My first witness is King.

The Judge. Come forward, King, and take your place upon the witness stand.

So King came forward, and was examined as follows:

Colman. Were you with the boys, King, yesterday afternoon, when Murray's cap was thrown in the water?

King. I was there when it got into the water.

Colman. Then tell the jury about it. Where were the boys, and what were they doing?

King. Why, we were all playing down by the pond, and Murray had a little vessel that he was rigging; and after a while we went up on the top of the bank, and sat down under a tree; Murray took his cap off, because it was warm, and put it down by the side of him.

Colman. What sort of a place was it where you were?

King. It was a place where the bank was steep and rocky. We went up there because it was high, and we thought there

How Murray, rigging his vessel, found his cap in the brook.

would be more breeze there. Besides, there was a tree there which made a shade.

Colman. Well, proceed.

King. After a while, Murray finished rigging his vessel, and then he got up to come away, and he looked around for his cap, but he could not find it. Pretty soon he looked over the bank, and there he saw it in the water. It was slowly floating away.

Colman. And what did he do then?

King. He ran down to the shore by a sort of path there was behind the tree, and there he saw a string like a kite-string lying along on the water from his cap to the shore. So he took hold of this string and pulled his cap in. Then he poured the water out of it, and came running up the bank again, demanding who it was that threw his cap into the water.

Colman. And what did the boys say?

King. They all laughed, and ran off in different directions, and Murray ran after them.

Colman. And did you hear Sparks acknowledge that he threw the cap into the water?

King. No, I don't remember that I heard Sparks particularly. There was a good deal of noise and confusion, so that I did not hear the particular voices.

Colman. Very well. That is all. You may go. My next witness is Erskine. Come forward, Erskine, and give your testimony.

Erskine, who was quite a small boy, now came forward, and was questioned as follows:

Colman. Were you with the boys yesterday afternoon, on the bank by the brook, at the time that Murray's cap was thrown into the water?

Erskine. Yes, I was.

Colman. Did you hear Sparks acknowledge that he was the one that threw it in?

Erskine. He did not say he threw it in; he said he dropped it in.

Colman. Well, that's the same thing.

The Judge. Did he say distinctly and plainly that it was he that dropped the cap into the water?

Erskine. Yes. Murray came running up the bank, and asking who dropped his cap into the water, and Sparks kept saying I did it, I did it.

Colman. Very well; that is enough. You will observe, gentlemen of the jury, that I have now proved that the cap was thrown or dropped into the water, and that Sparks acknowledged on the spot that it was he that did it. There can not possibly be any better evidence against any body than his own confession. I shall now prove how much damage was done, and how much trouble my client was put to in consequence of the wetting of the cap, and then my case will be closed. I wish to call Dummer.

Here Erskine retired from the witness stand, and Dummer, a boy somewhat larger, came forward and took his place.

Colman. Were you with the boys at the brook, Dummer, when Murray's cap was thrown into the water?

Dummer's conversation with Murray about the wet cap.

Dummer. No, I was not there at the time, but I met Murray afterward, when he was coming up to the house.

Colman. Very well; give the jury an account of what took place when you met him.

Dummer. I was playing out on the grounds, and I saw Murray coming along with his vessel in one hand and his cap in the other, and nothing on his head. So I called him to stop, and I ran over to where he was. I called to him to stop partly because I wanted to see his vessel, and partly to know what the matter was why he did not wear his cap. I saw that something was the matter.

Colman. Well, proceed.

Dummer. When I got up to him, I found that his cap was drenching wet, and he told me that some of the boys had thrown it into the brook.

Colman. Did he seem to be angry about it?

Dummer. Oh no, not at all; he laughed about it; and he said that he was going to bring some of them to trial. He said he was going to bring Sparks to trial, or Hardy, he did not know certainly which.

Colman. Did you look at the cap?

Dummer. Yes, I took it in my hand. It was wet through and through.

Colman (*holding up a cap to the witness*). Is this the cap?

Dummer. Yes, that is the very one.

Colman. You see, gentlemen of the jury, that it is quite a good cap, though not entirely new.

The cap produced in court. The confession denied.

Here there was a general laugh in the court and among the spectators, as it was plain that the cap was nearly worn out.

Colman. I admit, gentlemen of the jury, that the cap is not entirely new; still, as boys' caps go, this one is by no means to be despised. And now, Dummer, tell the jury about the trouble Murray had with his cap, in getting it dry and ready for use again.

Dummer. Why, he carried it into the house and hung it by the kitchen fire, and then went up and got another cap out of his room. It took all night to dry; indeed, it was damp a little on one side this morning.

Colman. That is all; I have not any more witnesses to examine at present.

The Judge. Now, Dana, you can bring forward any witnesses you may have for the defense.

Dana. I have only one witness to call, and that is Ropes. Come forward, Ropes.

Colman. I should like to know, your honor, what he is going to prove by his witness.

Dana. I am going to prove that this pretended confession, which the counsel on the other side alleges against my client, is no confession at all. It is true, as he says, that the best possible evidence against any person charged with any crime is his own confession, but then it must be a true and genuine one, and I am going to prove that this which they allege against my client was no confession at all.

The Judge. Very well; proceed.

Dana. Were you present on the bank, Ropes, at the time when Murray lost his cap into the water?

Ropes. Yes, I was.

Dana. And did you hear Sparks when he said that he did it?

Ropes. Yes, I did.

Dana. I want you to give the jury an account of how it was. Explain to them all the circumstances.

Ropes. The way was this: when Murray came up the bank with his cap, he began to call out to the boys to tell him who threw it into the water. He said he knew that some of them threw it in, for there was a string tied round it. If it had not been for that, he should have supposed, he said, that it rolled in of itself; but he knew that some of them threw it in by the string, and if he could find out who did it, he declared that he would spank the wet cap in their faces, to pay them for it.

Dana. And what did the boys say to that?

Ropes. They all began to say, "I did it—I did it," and to run off, while Murray chased them with the wet cap to spank it in their faces; but he could not catch any of them.

Dana. And did you understand that the boys, in saying they did it, really meant that they dropped the cap into the water, or did they only say so in play, to make Murray chase them with the cap?

Ropes. Why, I thought that they only said so in play.

The Judge. Did all the boys that were there say I did it?

Ropes. Yes, all except Hardy. Hardy did not run at all; he sat still at the foot of the tree. He was laughing so much that he

could not run. After a while he climbed up into the tree to get out of the way.

Dana. That is all. I have no more witnesses to bring.

The Judge. Then, Colman, you can argue the case to the jury, if you have any thing to say to them.

Colman. All that I have to say is, I have proved positively that Sparks acknowledged that he put the cap in the water, and I think his confession ought to be taken against him. He ought not to be allowed, after confessing that he did it, to come into court and say that in confessing it he told a fib. If he chose to confess it when he really did not do it, he ought to take the consequences, just as if he really did do it. So I hope that the jury will find him guilty, and make him pay ten cents damages, which is not at all too much, considering the injury done to the cap, and all the trouble that Murray had in drying it.

The Judge. Now, Dana, it is your turn, if you have any thing to say.

Dana. What I have to say is that the words which they proved that my client said do not amount to any real confession at all. I think the jury will be satisfied that the boys, when they said I did it, did not any of them mean really to admit that they dropped the cap into the water, but they only said it to make fun, and to have Murray chase them. Perhaps they did wrong in saying so, and perhaps they didn't. I say nothing about that, one way or the other; for my client is not now on trial for telling a fib, but only for dropping a cap in the water. And I think the jury will be satisfied that his saying I did it, in such a way, in com-

There are many confessions that are not entitled to be believed.

pany with a good many others, was only to make fun, and that is no proof at all that he was the one that is really guilty; and therefore they ought to decide in his favor.

The Judge. Gentlemen of the jury, you have heard what the counsel on each side have said. I think that they have presented the point very clearly and properly to you. The question simply is, Whether what Sparks said was a real and true confession, such as to furnish sufficient proof that he really did throw the cap in. A confession of the right kind is perhaps the best evidence against a person charged with an offense that we can possibly have; but, then, it is very essential that it should be of the right kind. There are a great many cases in which what are called confessions are considered as entitled to no weight at all in courts of justice.

For example, persons are often frightened into confessing a crime which they were entirely innocent of. They have been threatened with some dreadful consequences if they did not confess, and so have acknowledged that they were guilty when they were really perfectly innocent. Persons have been hired, too, to confess a crime which somebody else had committed. Persons have confessed crimes when they were intoxicated or when insane that had no existence at all except in their own disordered imaginations. So, you see, there are all sorts of confessions, good and bad, and what you have to consider in this case is whether or not this one, that is proved against Sparks, is really a good one—that is, whether it really is sufficient proof that he was the one that threw the cap into the water.

The jury now retired to consider the verdict. After a very few

The jury find Hardy guilty. Their reason. A new trial ordered.

minutes they returned. Clicket, who acted as foreman, said that they were agreed on the verdict.

The Judge. And what is the verdict?

Clicket. We believe that it was Hardy that threw the cap into the water, and so we decide that he must pay the ten cents, and not Sparks.

At hearing this verdict there was a general laugh both within the court and among the by-standers. Even the judge could not refrain from smiling. At length the judge called the assembly to order, and then addressed the jury as follows:

The Judge. But, Clicket, what made you imagine that Hardy was the one? There was no evidence whatever brought against *him.*

Clicket. Because it is just like him to do such things as that.

Here there was another general laugh, occasioned by the idea which Clicket seemed to entertain of the nature of legal evidence and of the duty of a jury. As soon as order was again restored, the judge proceeded as follows:

The Judge. I shall be obliged to set that verdict aside and order a new trial.

Clicket. Why? Is not that a good verdict?

The Judge. No, it is not good, for this reason. You were a jury to try Sparks and not Hardy. Hardy was not accused, and was not on trial. Besides, there was no evidence brought against him at all; and even if there had been ever so good evidence against him, it would all have been incidental, and would not have justified condemning him. A person can not be condemned until

Why the verdict was irregular. Another trial. The conspiracy.

he is regularly accused, and has an opportunity to bring forward witnesses in his defense, and to argue his case before the jury. So that your verdict was on every account irregular.

I therefore set aside that verdict. Sparks is neither acquitted nor condemned. Murray can bring forward the case again if he chooses, and have a new trial, though I should not advise him to do so unless he gets some new evidence, for I do not think that such a confession as he made ought to be considered by any jury as proof of his guilt.

A few days after this a new trial of this case was had, new evidence in the mean time having been obtained. In the new trial, however, Sparks was not the only one that was accused. Erskine and Hardy were accused with him. They were all three charged with having conspired to throw the cap into the water. There was a new jury empanneled for this second trial, though the counsel on both sides were the same.

The evidence in the second trial was substantially the same as in the first, in respect to the boys' playing upon the bank, the finding the cap in the water, the drawing of it to the land by means of the string, and the frolic which afterward took place on the bank when Murray ran after the boys with the wet cap. After this evidence had been completed, Colman, who was counsel for Murray in this case, as he had been before, called Warner forward.

Warner came forward from among the spectators and took his place on the witness stand.

Colman. Do you know any thing, Warner, about this case?

Warner. Yes; I was there at the time, and know pretty much all about it.

Colman. Tell the jury, in the first place, how you came to know about it.

Warner. Why, I happened to be at the time on the other side of the brook. I had been taking a walk there among the trees and bushes, and presently, when I came out to the path which runs along by the water there, I heard the voices of some boys on the high bank on the other side. So I looked to see who they were.

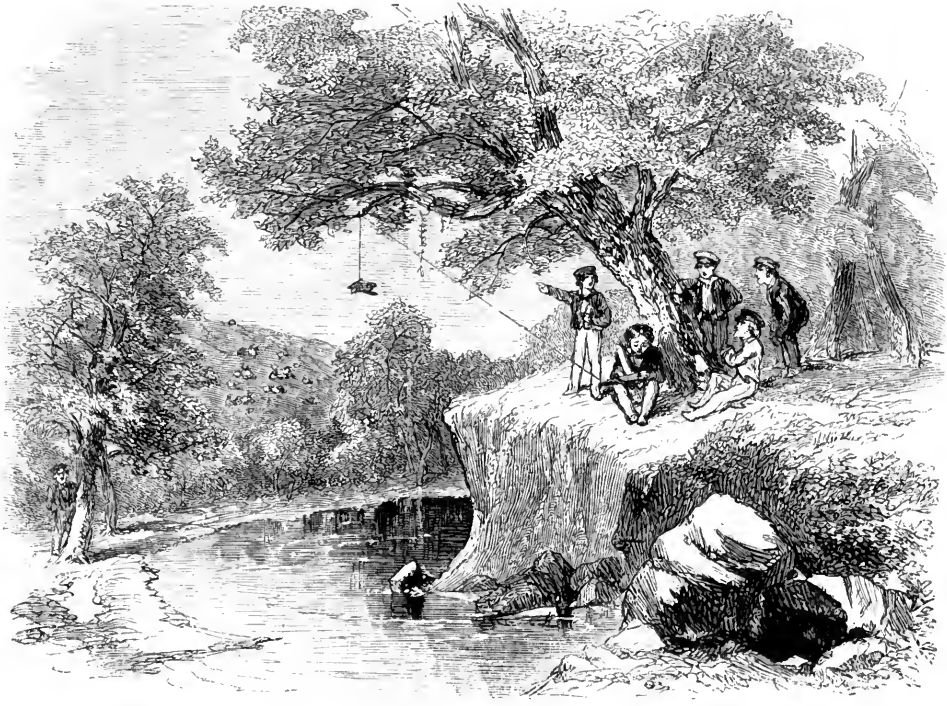
Colman. And whom did you see there?

Warner. I saw Murray sitting down under the tree at work on a little vessel. He seemed to be rigging it. I saw also several other boys around him. I saw that there was some roguery going on, and so I watched to see what it was.

The Judge. What made you think there was roguery going on?

Warner. Why, I saw the boys standing up behind Murray and making signs to each other. So I watched to see what was going on. I saw that there was an old kite-tail and piece of the twine hanging down from the tree. It belonged to one of the boys' kites, I suppose, that had got lodged there. There was a piece of the string hanging down over one of the branches of the tree.

Colman. Which way did this branch extend—toward the land or toward the water?



HOW IT WAS DONE.

Warner. It extended out toward the water. It hung over the bank some distance. The piece of twine lay across this branch so that the two ends hung down on the two sides of it, one on each side. As Murray was sitting his back was toward the brook, so that he did not see any thing in that direction.

Colman. Very well. Now, if you please, tell the jury what happened next.

Warner. Hardy got hold of the two ends of the twine, that hung down from the branch, and pretty soon he took up Murray's cap, which lay on the ground close by him, and tied it to one end of the string. Then, by pulling upon the other end of the string, he could hoist the cap up into the air, or let it down, as he pleased.

Colman. Did he do this openly, as if he was willing that Murray should see it?

Warner. No, he did it slyly. He made signs to the other boys not to let Murray know. Murray was busily engaged over his vessel all the time, and did not know what was going on.

Colman. Which of the other boys seemed to be engaged with Hardy in this roguery?

Warner. I don't suppose that they considered it roguery. I presume they meant it only for play. But the boys that helped him about it were Erskine and Sparks. Erskine held one end of the twine, while Hardy tied the cap on the other end, and Sparks stood by helping.

Colman. Very well; go on and tell the jury all that happened.

How the boys fixed the cap so as to fall when Murray rose.

Warner. As soon as they had got the cap fastened to the twine, they began to hoist it up and down by pulling upon the other end of the twine. In this way they hoisted it up quite high into the tree. Presently Hardy made some signs to them, and then began to climb up into the tree. When he got up there, he made signs to them to let go of the cap, but to keep hold of the other end of the twine. They did so, and then he slipped the twine, which passed across the branch, away out, so as to let the cap hang over the water. Then the boys on the ground began to let it down, as if they were going to let it down into the brook.

Colman. Did not Murray know what was going on all this time?

Warner. He did not appear to know. He went on rigging his vessel; but his back was toward the boys that were playing with his cap, and so he could not see them. Besides, they were very sly about it, so as to prevent his knowing what was going on.

Colman. Well, proceed with your account. You have not told us yet how the cap came into the water.

Warner. After playing with the cap in this way for a while, the boys finally coiled the end of the string up on the ground directly behind where Murray was sitting, and then one of them got down upon the grass before him, and asked him to sit back a little way. So Murray moved back, and this brought him upon the string. The boys kept hold of the string farther up until they found that Murray was sitting on it, and then they let go.

Of course, now Murray's sitting on the string kept the cap from dropping into the water, but it was plain that, the moment he should get up, down the cap would go; and they had hung it directly over the water.

Colman. Well, how did it turn out?

Warner. After the boys had got it all arranged in this way, they waited a little while, expecting that Murray would get up. At last, when he had finished rigging his vessel, he got up, and then down the cap went into the brook.

Colman. And that is all that you saw?

Warner. Yes; excepting that the boys immediately told Murray that his cap was in the water, and he ran down the bank to get it. He pulled it in by the string.

Dana. So that, in reality, it was Murray himself who dropped his cap into the water?

Warner. Yes—or, rather, I don't know whether you will consider that it was Murray, or the boys, that dropped it in. I suppose that will be for the jury to determine. The way in which it was done was as I have told you. The boys put the string so as to make Murray sit on it, and then when he got up the cap fell in.

The Judge. Are there any more witnesses to be examined before the case goes to the jury?

Colman. I have no more.

Dana. I have none.

The Judge. Proceed, then, Colman, if you have any thing to say to the jury.

Colman's speech. Dana replies to him.

Colman. I scarcely think, gentlemen of the jury, that it is necessary for me to say any thing. The witness that I brought forward has given an account of the affair that makes it perfectly plain. There is no question about it at all. These three boys all conspired together to put the cap in such a position that, on Murray's rising from his seat, it should fall into the water. The case is just the same as if they had dropped it in with their own hands. I think, therefore, that you ought to decide against them, and fine them about four cents apiece, to compensate Murray for the damage done to his cap by being wet, and for his trouble.

The judge now called upon Dana to argue the case for the defense.

Dana. It seems to me, gentlemen of the jury, that you ought not to give a verdict against my clients, because the thing charged against them has not been proved. What was the charge brought against them? Why, that they threw Murray's cap into the water. Now it is proved by Murray's own witness that they did no such thing. They only hung the cap up on a tree. (*Laughter among the by-standers.*) The gentlemen may laugh if they please, but I insist upon it that this is all they did. They hung the cap up on a tree, and then coiled the string that was fastened to it on the ground. It is true, the consequence of these things was that, after a while, the cap got into the water. But people are not always responsible for the consequences of what they do. I contend they are only responsible for the things they actually do themselves.

If, now, the charge against my clients was that they hung Murray's cap on a tree in such a manner that it afterward fell into the water, then perhaps you ought to give a verdict against him. But that is not the charge. The charge is that they threw it in themselves, and this has not been proved. On the contrary, it has been proved that they did not throw it in. His own witnesses prove this.

The Judge. Gentlemen of the jury, this case has been very fully presented to you. The simple question for you to decide is whether the defendants did "throw the cap into the water," within the ordinary and proper use of that language. They did not throw it in with their own hands, but they made such arrangements as resulted in the throwing of it in. Was that throwing it in?

Cases analogous to this often occur among men. I read of a case where a man named Dirck sent a box to a man named Jones, and in the box was a pistol, which was arranged in such a way that when the cover of the box was lifted up the pistol should go off. He meant that Jones should open the box, and so get killed.

Clicket (*interrupting the court*). And did he get killed?

The Judge (*proceeding*). It so happened in this instance that the plan failed. Jones had some reason to suspect treachery, and so he soaked the box well in water before he opened it, and then, of course, when he lifted up the cover, though the lock of the pistol snapped, the powder, being wet, did not burn. Thus the plot failed.

But now suppose that Jones had not suspected any thing, but had opened the box at once when he first received it, and had been killed by the pistol, and then suppose that Dirck had been tried for murder. In such a case as that, ought the jury to consider that Dirck was guilty or not guilty? In other words, ought they to consider that Dirck killed Jones, or that Jones killed himself?

It is a question very similar to that which you, gentlemen of the jury, have to decide in this case, and, without any further remarks, I leave you to decide it.

Hereupon the jury retired, but after a short time they came into court again.

The Judge. Gentlemen of the jury, have you agreed upon your verdict?

A Juryman. No, not yet. We want to ask you a question first.

The Judge. Very well. What is the question?

The Juryman. In case we decide that the boys did throw the cap into the water, are we also to decide how much damages they shall pay?

The Judge. Yes. The whole case is in your hands. You are to determine if they are guilty, and if so, what the damages shall be.

Hereupon the jury retired again, and again, after being absent a few minutes, they returned.

The verdict was, that the three boys were guilty, and that Sparks and Hardy must pay four cents apiece, and Erskine two

cents, to Murray for damages, and that all three of them must pay one cent each into the black box.

As soon as the verdict was given, the judge announced that the court was adjourned, when immediately Clicket burst forth from among the by-standers, and went off leaping, and shouting, and waving his cap in the air, with shouts of "Hur-rah! hur-rah! I told 'em so! I knew that Hardy was at the bottom of it!"

The defendants paid their fines and the contribution to the black box good-naturedly, and thus was settled the case of the cap conspiracy.

IX.

INSUBORDINATION.

During the time that the court existed at the Morningdale school, there was seldom any difficulty in inducing the parties whose cases were tried in it to submit to the decisions. If the question was about a squirrel, or a trap, or a fishing-pole, or any other piece of property, the subject of dispute was usually surrendered at once by the boy that lost the case; and even when fines were inflicted, the money was usually paid into the black box quite readily. Occasionally, it is true, when some small boy was fined, he would declare, when the court adjourned, that the verdict was unjust, and that he would not pay the money. But then, after a little reflection, he usually altered his mind and paid it in.

This hesitation in submitting to the decision of the court was somewhat excusable in the case of the small boys, for boys, when very young, can not be expected to understand much about the necessity and duty of subordination to law. Indeed, it is probable that if an attempt were to be made to establish such a court as this in any ordinary school, it would fail on this very account. There would not be manliness enough among the boys to understand and feel the necessity of submitting to the decisions.

There would be another difficulty, too, that would probably pre-

The tact of Judge Justin in preserving order in court.

vent the success of the attempt to establish such a court as this in most schools, namely, the impossibility of preserving order in the court itself while the proceedings were going on. Indeed, in the case of the court of Morningdale, these difficulties would have proved insuperable, and would have brought the thing to a stand very soon, had it not been for the remarkably manly character and discreet management of Judge Justin. By means of his patience and his tact, combined with the ascendency which he exercised over the others in consequence of his age and his attainments, he succeeded in almost all cases, both in preserving order in the court, and also in inducing those who lost their case to submit to the decisions which were pronounced against them. There was one case, however, where the refusal of a boy to submit to the decision of the court occasioned considerable trouble, though the difficulty was finally settled to the satisfaction of all concerned.

Among the other persons employed about the house and grounds of the Morningdale school was a colored boy named Lingo. Lingo's business was that of a messenger generally. He went of errands, helped harness the horses, brought tools, and water to drink, for the other workmen employed about the grounds, and, in a word, was expected to make himself generally useful. It was understood that any body might call upon him, even the boys, and it was his duty always to run when called upon, and do any thing and every thing which might be required. This, for most boys, would have been a hard lot, but Lingo was so patient and good-natured, and, moreover, generally so full of fun, that the boys all liked him very much, and they exercised a much greater de-

gree of discretion in requiring services of him than might have been expected.

One Saturday afternoon, very soon after dinner, a boy named Urbin was coming out from the door, when he saw Lingo pumping a small tin pail full of water from the pump which stood near the kitchen door. The garden gate was open, and Urbin inferred that Lingo had just come out from the garden, and that he was going back again.

"Lingo," said Urbin, "what are you doing?"

"I am going to carry some water into the garden," replied Lingo.

"What are you going to water with it?" asked Urbin.

"I am going to water Uncle Jack," said Lingo.

Uncle Jack was the gardener.

"Well, Lingo, I want you," said Urbin.

"I'll come directly," said Lingo, "as soon as I have carried this water to Uncle Jack."

"That's right," said Urbin; "and, in the mean time, I'll be getting this fishing-line untangled."

So Urbin sat down on the edge of the piazza, and proceeded to untangle his fishing-line. As soon as Lingo had filled his pail, he set it down on the platform of the pump, and went toward the kitchen door as if he were going into the house, whistling as he went.

"Here! here!" said Urbin, calling out to him suddenly. "Where are you going?"

"I am going to get some molasses to put into the water," re-

plied Lingo. "I have got to sweeten Uncle Jack as well as water him."

"Very well," said Urbin. And so Lingo went on.

In a few minutes Lingo came out with a small jug of molasses in his hand. He carried the molasses and the water out into the garden, and then came back.

"Now, Lingo," said Urbin, "look about, and find about half a dozen or a dozen of the best boys you can, and ask them how they would like to go with me and take the boat down to the river. And ask Murray if we may take the boat-truck. Tell Murray that we should like to have him go too, if he will; but, at any rate, ask him if we may take the boat-truck."

The boat-truck, as the boys called it, was a sort of truck made from a pair of old wagon wheels, with the axle-tree belonging to them. It was used for transporting a boat which the boys had in their pond, near the school-house, down to the river, and also to bring it back again. The brook itself was not navigable below the dam by which the pond was formed, and, accordingly, whenever the boys wished to move their boat from one sheet of water to the other, they were obliged to convey it by land; to facilitate this transport they had contrived the truck. It consisted, as has already been said, of an old wagon axle-tree with a pair of wheels attached. Upon the axle-tree the boys had fastened a plank in a vertical position, that is, edge upward, and they had so shaped this upper edge as to fit the bottom of the boat, thus forming what is called a cradle. The boat, resting in this cradle, was kept upright and steady when the truck was in mo-

tion. The poise of the boat the other way, that is, from end to end, was preserved by the boys themselves, who took hold of it to push it along.

This is an excellent way to move a boat for a short distance over land, and I commend it to all boys who may have occasion to perform such an operation, as a very convenient mode, and one easy for them to carry into effect, that is, provided that they get the old wagon wheels.

The boat-truck, when made, was put under the charge of Murray. It was the custom at Morningdale that all public property like this, belonging to the boys, was committed to the charge of a particular custodian, whose business it was to take care of it, to see that it was always in repair, and to keep it in its proper place. The custodian, in such cases, acted as a sort of trustee, and he had the property thus confided to him under his control at all hours. No one could take it without his permission. But then it was always his duty to give permission, unless there was some good and sufficient reason why he should withhold it.

In other words, although he held the property, still he held it not in his own right, but as *trustee;* that is, he held it not for his own benefit, but for the benefit of the owners, and it was, of course, his duty to make it as constantly and as fully available for the owners' use as possible.

It is an excellent plan, when boys in schools or in neighborhoods hold property in common in this way, that they should appoint some one to take charge of it, and to hold it for their use. It is important, however, that the person thus appointed should

be old enough to understand the distinction between holding property in this way as trustee for other people, and holding property of his own for himself. I have known boys in such a case who seemed to confound this distinction entirely, and act with property thus held by them in trust almost as arbitrarily, and appropriate it almost as much to their own use, as if it had been really their own.

Lingo came back after a short time and reported that a number of boys were coming to join the proposed expedition.

"And Murray says, too," he added, "that you may take the truck and the boat."

"Very good," rejoined Urbin.

"He says the boat is locked, and the key of the padlock is on the nail just inside the door of his room."

"Good!" said Urbin. "And you may go right up to his room now and get it."

In a few minutes eight or ten boys were collected on the platform.

"Now," said Urbin, "the first thing is to choose a captain. Choose whomsoever you please—I don't care—only don't choose me, unless you intend to obey me."

In saying this, Urbin referred to another of the peculiar customs of Morningdale, which was, always to choose a captain in case of excursions of this kind. The captain, when chosen, did not, it is true, exercise his command in any very regular or formal manner. Indeed, generally, during the progress of the expedition, a by-stander, observing the boys, would hardly imagine

that there was any captain at all. So long as things went on well, he assumed very little authority and gave very few orders. Still, the captain was there, ready at hand; and in case of any difficulty or emergency, he was the one to decide what to do, and if any question arose as to the course of procedure, he was the one to decide it.

The captains were chosen by regular vote. There was a little drawer under a seat in the summer-house, where the courts were usually held, in which there was always kept a good supply of blank ballots—that is, of pieces of paper about one inch long and half an inch wide. There were also several pencils in the drawer. Whenever an expedition like the one I am describing was undertaken, the boys usually proceeded to the summer-house, and chose the captain by voting for him in a regular manner. Generally the boy who proposed the expedition was the one who was chosen captain, but this was not always the case.

It was in allusion to this custom that Urbin told the boys to choose whomsoever they liked, in order that they might not feel bound to choose him.

It was the rule that the two youngest boys in the party on such occasions were to receive and count the votes, and announce the result.

It need scarcely be said, I suppose, that these arrangements for voting, and the rules and usages by which the voting was regulated, were all Justin's work. Justin had two reasons for making it the duty of the smallest boys in the party to receive and count the votes. One was, because it was quite certain that

neither of them would be the one chosen captain, and so they could always, without impropriety, announce the result of the election. The other was, that he wished to give the youngest as well as the oldest a practical participation in the proceeding, in order to interest them in it, and make them more disposed to obey the captain when chosen, from the fact that they had acted an important part in the choosing of him. In these, as in all his other arrangements, Justin evinced a great deal of wisdom.

In obedience to Urbin's call, the boys all went to the summer-house.

"Who's the youngest?" said Urbin.

"I am," said Sparks.

"No, I am," said Clicket.

"Then you and I together," said Sparks.

So Clicket opened the drawer, and, taking out a parcel of the ballots, he gave some to Sparks and retained some himself, and then the two boys proceeded to distribute them to all the party. They also distributed the pencils. As fast as the boys received the ballots and the pencils, they proceeded to write the name upon them of the person for whom they respectively wished to vote, and then Sparks collected the ballots, while Clicket put back the blank ballots that were not used, and also the pencils. As soon as the ballots were all in, Clicket and Sparks spread them down upon the seat, and began counting them over. All this time, the boys who had been voting were standing and sitting in all sorts of attitudes in and about the summer-house, talking together in a very eager and uninterrupted manner, like so many

Eight votes out of eleven for Urbin. Lingo goes for permission.

members of Congress pending the taking of the yeas and nays. In a few minutes, however, Clicket's voice was heard rising in a shout above the general din,

"Eleven votes! Eight for Urbin! Urbin is chosen! HURRAH!"

The whole party immediately left the summer-house. They proceeded in a body to a sort of back shed which served as a general place of storage for wagons, trucks, wheelbarrows, and other things of that sort. They got out the boat-truck, and then, some taking hold of the shafts in front, and some of a long rope with cross-bars that extended forward, while others still pushed behind, they ran with it along a smooth and broad road, well graveled, toward the pond. Just before they reached the landing, Lingo came with the key.

"Have you got the key, Lingo?" asked Urbin.

"Yes," said Lingo. "Here it is."

"Well, now, while we are getting the boat on the truck, Lingo, I want you to go up and tell Dr. Mather that we are going down to the river with the boat this afternoon, and ask him if you may go with us. We may want you for something or other."

Lingo ran off with great glee to obtain this permission. He liked to go with the boys on their expeditions very much indeed.

The way of loading the boat upon the truck was to back the truck down into the water, under the boat, as it were, and then to draw both out together. There was a convenient landing

The boat upon the truck. Bruno. The flag.

which the boys had sloped and graveled expressly for this purpose. They now, accordingly, backed the truck down this landing into the water, and then two boys, who had previously got into the boat for this purpose, and had pushed it a little way from the shore, brought it up over the truck so as to let it set in the cradle upon the axle-tree. The boys then on the shore, pulling upon the rope, drew truck, boat, and all out upon dry land.

They let it stand a moment to allow the water to drain off from it, and they also passed a rope round over the forward part of the boat and tied it below, so as to secure it to the shafts. All this time Bruno, a dog that belonged to the boys, was racing round and round the boat in great glee, rejoicing in the prospect of going off with the party on their expedition; for Bruno enjoyed these excursions quite as much as the boys.

"Now, Sparks," said Urbin, "where's the flag?"

"I'll run and get it," said Sparks.

"I'll go," said Clicket.

"No," rejoined Urbin, "let Sparks go. We'll move along. You can come with it and overtake us."

Sparks soon came with the flag, and then, by Urbin's direction, he mounted into the boat and took his station there, near the middle of it, and held the flag. Bruno got into the boat too, and took his place forward. In this way the boat was drawn by the boys along the road which led to the river.

It was in the course of this expedition that the difficulty originated which led in the end to a refusal on the part of one of the

THE POLITAGE.

Loss of the linch-pin. The alarm. Stopping in time.

boys to submit to the decision of the court. The boy was Urbin himself.

There was, however, another difficulty that happened first, and which, accordingly, I must first briefly explain. It occurred in consequence of an accident that happened to the truck. This accident was no other than the losing of a linch-pin.

The loss was discovered just as the boys reached the bottom of a long hill. The alarm was given by the boys who had hold of the boat behind. They saw one of the wheels coming off, and they immediately raised a great shout and outcry, calling upon those who were drawing upon the rope forward to stop.

"Hallo!" said they. "Stop!" "Hold on!" "Avast hauling there!" "Hi-yo!" "The wheel's coming off."

The train was stopped just in time to save the wheel from coming off, and the whole load from coming down to the ground. The first thing to be done obviously was for all the boys to take hold of the boat, and of the axle-tree of the truck on the side where the damage had occurred, and lift it up a little, so as to allow of the wheel's being slipped back again to its place.

"There!" said Urbin, speaking in a tone of satisfaction when this had been accomplished, "so far so good; and now what are we to do next?"

"Send back along the road and look for the linch-pin," said one of the boys.

"Yes," said Urbin, "that is a good idea."

So saying, he looked about and selected two boys to go back and see if they could find the lost pin.

Captain Urbin directs a search. Various expedients proposed.

"You may go, Jones, for one," said he, "and you, Moses, for another."

"It won't do any good to look for it," said Moses. "There's no knowing how far back it may have fallen out. A wheel will run sometimes half a mile without any linch-pin."

"You have nothing to do with that," replied Urbin. "You have nothing to do but to obey the captain's orders. You and Jones go back and look carefully. One of you take one half of the road and the other the other half, and go on till you come to the top of the hill, and if you don't find it then you may come back again."

So Moses and Jones walked away, searching diligently along the road as they went to find the linch-pin.

"And now, boys," said Urbin, "as it is very likely that they may not find it, we may as well be considering what we shall do next, in case they don't."

"Make a wooden linch-pin," said Lingo. "I've got the hatchet to split out a piece of wood."

"No," said Clicket, "a wooden linch-pin would not stand at all. You had better send one of the boys back to the house and get one of the linch-pins out of the wagon."

"I would not do that," said Warner. "Dr. Mather would not allow it. Besides, very likely it would not fit. I think we can get along without any linch-pin at all. We will watch the wheel all the way, and when we see that it is beginning to come off, we will stop and put it on again."

While the boys were thus offering their various opinions in

respect to the course to be pursued in the emergency, Urbin said nothing, but was quietly employed in cutting out, with his knife, a small, wedge-shaped piece of wood from a stick which he had picked up by the road side. He was making it of a shape and size suitable to fit the hole in the end of the axle-tree where the linch-pin had gone in.

"Are you going to make a wooden linch-pin?" asked a boy named Carleton.

"No," said Urbin, "I am only making a wedge to take the measure of the hole."

"And what are you going to do then?" asked Carleton.

"I am going to send you with it to Danvil's," replied Urbin, "to get a new linch-pin made."

"No," said Carleton.

"Yes," said Urbin.

"You must not send me," rejoined Carleton. "You ought to send Lingo."

"That's a question for me to consider," replied Urbin. "The boys chose me captain."

"Well, you won't send me," said Carleton.

"I shall give you the order," replied Urbin, "and, of course, that is all that I can do. You can obey it or not, just as you please."

"But it is a great way to Danvil's," said Carleton. "It is as much as a quarter of a mile."

"I don't think it is half a quarter of a mile," rejoined Urbin. "It will take you five minutes to go there and five minutes to

come back, and it may take Danvil five minutes to make a new pin. In fact, it is very likely that he will have one to fit, all ready, among his old iron. While you are gone we will be moving on slowly, and you can come on across and overtake us at the corner."

Danvil, as the reader will easily understand, was the village blacksmith.

"I don't think it is a good plan at all," said Carleton. "And, besides, if you send anybody, you ought to send Lingo. That's just what he came with us for—to be the errand-boy."

"It is for the captain to consider who is the best to send," replied Urbin.

"I'll go, Mr. Urbin, if you wish," said Lingo.

"Very well," said Urbin; "we will wait and see whether the boys find the old linch-pin or not in the road."

In a few minutes the two boys who had been sent along the road were seen coming back, searching carefully as they came. They soon arrived and reported that the linch-pin was nowhere to be found.

"Then, Carleton," said Urbin, "I want you to take this wooden wedge for a measure, and go to Danvil's with it. I have pressed it into the hole, so that he will see by the marks on it just how large the hole is. And I'll give you some money to pay."

"No," said Carleton, "I don't want to go."

"I'll go," said one of the other boys. "And I." "And I," said others.

"No," replied Urbin; "I have given the order to Carleton, and if he will not go I'll go myself."

Urbin was a very strict disciplinarian in all these cases. He always obeyed very implicitly when any other boy was captain; and although, when he was captain himself, he generally allowed the expedition to go on in its natural course, and seldom interposed with unnecessary commands, as some boys would have done, as if just to display their authority, still, whenever he gave a command, he was very firm in insisting on its being obeyed.

"There is no reason in making me go," said Carleton, "when there are so many boys ready to go in my place, and when Lingo is here too, on purpose to do such things."

"It is just as you please," said Urbin. "You can go or not. If you don't go, I'll go myself."

"Then you may go yourself," replied Carleton.

"Well, boys," said Urbin, "you may go on slowly with the boat. You fellows behind there must watch the wheel, and give the alarm the instant you see it coming off. You can go on so to the corner, and wait there till I come."

So the boys went on. They succeeded in getting to the corner with very little difficulty. The wheel began to come off once, and they stopped and put it on again. They also proceeded very slowly all the way. Thus they arrived at last safely at the place of rendezvous, and there, after waiting about ten minutes, they saw Urbin coming with a new linch-pin in his hand.

"Now, boys," said Urbin, "we can go ahead strong again."

After this the expedition went on very prosperously. To give a full account of the various adventures which the party met with—of the launching of the boat upon the river, and of the long row which they took through a shady place of still water in the midst of a dense wood, and of the fishes which they caught, and of the berries which they gathered, would take me too far away from the subject of the chapter, which is that of the difficulties merely to which the expedition gave rise. The disobedience of Carleton to Urbin's order was one of these difficulties, and an accident which happened to Urbin himself was the origin of the other. The accident happened as follows:

I have already said that the boat was fastened by a padlock, and that the key of the padlock was in the charge of Murray, who was the custodian of the boat as well as of the truck. Now, whenever the boys took the boat down upon the river, if they had occasion to leave it any where, they always locked it by means of this padlock, and took the key with them.

It happened that during this excursion the boys left the boat. They left it for the purpose of taking a ramble in the woods. When, at length, the time arrived for them to return, they went back to the boat, and Urbin unlocked the padlock. He took the padlock out from the link of the chain in which it had been inserted, and then tossed the chain into the boat. He also attempted to toss the padlock in, but instead of going where he had intended, namely, into the bottom of the boat, it struck upon one of the thwarts and immediately bounded overboard, and in an instant padlock, key, and all went straight to the bottom.

Urbin would not break a good law for the sake of twenty-five cents.

The boys fished about for a long time with a boat-hook, in hopes to recover the padlock, but in vain. Some of the boys, who were good swimmers, proposed to undress and dive for it; but it was a rule of the school that they were never to bathe in the river unless one of the teachers were with them. The boys said they did not believe that Dr. Mather would have any objection to their going in, under the circumstances of the case, but Urbin would not listen to the proposal. He said that a new padlock could be bought for twenty-five cents, and he would not have any thing to do with breaking a good law for such a small consideration as that.

Accordingly, when they got tired of fishing about for the padlock with the boat-hook, they gave up the search and all went home.

The next day Urbin brought an action against Carleton in the court for disobedience of orders on an expedition, and the case was formally tried. Urbin managed his own case, but Warner appeared for Carleton. The trial proceeded for a time in the usual form. Urbin proved, by proper witnesses, that he was fairly chosen captain of the expedition, and that, when the linch-pin was lost, he gave Carleton a plain and distinct order to go to the blacksmith's to get a new one. He proved, also, that such an order as that was fully within his powers as captain, it being a practice for the captains to send any of the boys away on errands and messages whenever it was necessary to promote the good of the expedition, and that it was universally understood that the boys were bound to obey such commands. Having

proved these things he rested his case, claiming, however, that, as a punishment for his insubordination and disobedience, Carleton should be fined a good round sum, to go into the black box. Of course, he did not claim any damages for himself. It was only a public offense.

The other side were then called upon for the defense, and when they were about to introduce witnesses, Urbin asked what they intended to prove. Warner said he meant to prove that it was not a good plan to send to the blacksmith's for a new linchpin, and that, if it was, Carleton was not the best person to send. But Urbin objected to any witnesses being called to such points as these, and so he and Warner argued the case before the judge. After hearing their arguments, and taking a little time for consideration, the judge decided that the witnesses could not be examined, and he gave the reasons for it as follows:

The question whether or not the order which Urbin gave to Carleton was a wise one or not, or whether the thing which he ordered Carleton to do was the best thing to be done under the circumstances, is a matter of judgment and discretion; and it is the captain's judgment and discretion, and not the jury's, which are to decide it. That is the very thing that you choose a captain for—to make use of his judgment and discretion, instead of your own, in the expedition. His judgment may be good or it may be bad. You must consider which it is likely to be when you appoint him; but after you appoint him you must submit to his decisions, if the things that he requires are within the scope of the powers that you have conferred upon him. A jury can not,

in such a case, look into the question of the wisdom or want of wisdom of what he does at all.

If Carleton can bring forward any witnesses to show that Urbin was not duly appointed captain, and so had no right to command; or that he did not distinctly give the command; or that the command was one which was beyond his powers; or that he, Carleton, did really obey it, any such points as these the jury can consider, because they are *outside* questions, as it were, and deciding them does not interfere with the powers conferred by being appointed to the captaincy. But if there is no proof on any of these points—if Carleton was duly appointed; if the order was fairly within the scope of the powers ordinarily understood to be conferred by such an appointment, and if the command was distinctly given, then that is all that the jury can inquire about —that is to say, the jury can determine whether Urbin was entitled to command or not, but in the exercise of his command they can not substitute their discretion for his. That would be making the jury the captain of the expedition in his place.

So Warner was not allowed to bring forward his witnesses to prove that the order was not a good one, and the taking of testimony was at once closed, for he admitted that he had no proof to offer either that Urbin was not chosen captain, or that Carleton did not refuse to obey him.

When Urbin came to argue the case to the jury, he alluded to Carleton's attempt to excuse himself for his disobedience on the ground that the command was not a wise one, and said that this, instead of being any excuse, was only an aggravation.

Urbin's argument. Obey, whether you think the command wise or foolish.

"When any person is really in authority," said Urbin, "they must be obeyed in all things. What would become of an army if the soldiers considered themselves at liberty to disobey the orders whenever they thought they were not the best orders that could be given. Children often have orders from their parents which they think are unnecessary or unwise, and are they, for that reason, not bound to obey them? Those are the very commands that test the principle of obedience. The others do not test it at all. It is nothing at all to do what your teacher or your parent says, when you see yourself that that is the best thing that you can do. I want to see a boy obey when he does not see that it is the best thing that he can do, and even when he is pretty sure that he can see that it is not the best. At any rate, that is the kind of obedience that I mean to have when I am captain, and a person who does not have that kind is no captain at all. He is captain as long as his soldiers think just as he does, and when they do not, then they are captain—first one and then another, according as they happen to think about what is best to be done; and what kind of discipline do you call that?"

The jury brought in a verdict of guilty against Carleton, and he was fined ten cents for the black box.

Thus this question was settled; but on the following day another one arose in respect to the loss of the padlock. It was a rule of the boat that the ordinary wear and tear, and all accidents arising from the fair and proper use of the boat, should be paid by a tax of two cents apiece, levied on all the boys who

Ought Urbin to pay for the padlock? An amicable suit.

owned shares in the boat. Murray kept the fund thus raised. When he heard of the loss of the padlock, he told Urbin that he did not know what ought to be done about it.

"I am not sure," said he, "whether you ought to pay for it, or whether I ought to buy a new one out of the fund."

Urbin insisted that *he* ought not to pay for it. It was one of those accidents, he said, that occurred in the fair and proper use of the boat, for which nobody was to blame, and the damage ought to be made good out of the fund.

"I am inclined to think so too," said Murray; "but some of the boys may think differently, and the fund is their money, not mine, so that I don't like to decide the case myself. Suppose we bring the question before the court, and let the judge and jury decide it."

"Agreed!" said Urbin. "I'll risk their deciding against me."

Urbin's objection to pay for the padlock did not arise from any avaricious desire to keep his money, for he had paid, of his own accord, for the new linch-pin half as much as would be required for the padlock without saying any thing about it. But he thought it was unjust that he should be required to pay, since the padlock was lost by an accident not to have been foreseen, which befell him while he was acting for and in behalf of almost the whole company of boat proprietors. So he declared that he would not pay, but he said he had no objection to standing trial.

The case was accordingly brought to court. Such a suit as this, brought by agreement between the parties, is called an amicable suit.

A decision against Urbin. Urbin rebels. The meeting.

The jury was appointed, and the case was regularly tried. Urbin did not, however, make a very vigorous defense, for he was confident that the verdict would be in his favor. But, to his utter astonishment, he found, when the verdict was recorded, that it was against him. He was sentenced to buy a new padlock, to replace the one that was lost.

Urbin declared that he would not submit to so unjust a decision. He did not care any thing about the money, he said, but he would not submit to be imposed upon. The loss of the padlock was not his fault—it was an accident that befell the expedition—and he was not going to pay for it.

"But the jury have decided it against you," said several of the boys.

"I don't care for that," said Urbin. "I would not pay the money if forty juries had decided it against me."

Things remained in this state for a day or two, and then the boys proposed to have a meeting to consider what they should do. They asked Justin to come and attend the meeting, and Justin said he would.

So the meeting was held. Urbin, and some other boys who took his part in the controversy, did not attend. Most of the other boys were there, however, and Justin called upon them, one after another, to give their opinions.

Some of the boys, when thus called upon, replied that they had not any thing to say. They did not know, they said, what was the best thing to be done. Others contented themselves with expressing their approval of some plan proposed by those who spoke

before it came to their turn. The principal plans suggested were the following:

Moses proposed that they should seize something of Urbin's, and keep it until the money was paid.

"That is the way they do in real courts," said he. "If it is decided that a man must pay something, and he won't pay it, they send an officer to his house and take his furniture, or his books, or any thing else they can find, and sell it, and so raise the money. I don't suppose it would be best to sell any of Urbin's things, because nobody would want to buy them, but we might keep them until he agreed to buy a new padlock."

"What things could we take?" asked one of the boys.

"Why, we might take his fishing-pole and line," replied Moses, "or his foot-ball. He has got a first-rate foot-ball."

Two or three of the boys expressed an immediate approval of this plan, but some of the others looked so grave and doubtful when it was proposed that it was soon dropped.

Dana suggested that they should resolve not to have any thing more to do with him until he would submit to the verdict.

"We might make a rule among ourselves," said he, "that we won't play with him, nor let him play with us, till he agrees to pay for the padlock. We have a right to do that, though it is rather doubtful whether we have a right to seize his things, as Moses proposed. We have certainly a right to say we won't play with him, if we choose, and I think he'll soon get tired of playing all alone."

To this proposal Ogden replied that he thought it might, per-

haps, be a very good one, if all the boys in the school were united in it.

"I do not think, however," said he, "that we should be all united. Indeed, there are several boys who take Urbin's part already, and there are probably some others who would not be strict in following out our rule not to play with him; so that the end of it would be that the boys would be divided into two parties, those who would play with Urbin and those who would not, and that would be a bad state of things."

Jones proposed that they should state the case to Dr. Mather, and ask him to take money enough out of Urbin's pocket-money to pay for the padlock.

"He would do it, I am sure," said Jones. "And, in fact, I believe that, as soon as Urbin knew that we were going to do that, he would pay at once. He would be ashamed to have Dr. Mather know any thing about it."

Parks was against troubling Dr. Mather with the affair at all. "Indeed," said he, "I don't think it is worth having any trouble about for any of us. Let us make a contribution among ourselves, and raise money to pay for the new padlock. Two cents apiece for three quarters of us will be enough to make up all that is wanted."

"Why, that will be giving up to him altogether," said Moses.

"Very well," replied Parks. "What is the harm in giving up to him. If he is not willing to abide by the decisions of the court, there are enough of us left who are willing, so that we can go on just as well. Only, after this, we won't try any more cases

that he is concerned in. We will tell him it is of no use for us to try his cases, for he won't submit to the verdicts."

Parks' plan was quite favorably received, but still the boys did not seem to be wholly prepared to adopt it. The vote was taken, too, on the various other plans proposed, and, although several persons voted for each one, no one had a majority of votes, and so no one was carried. So Justin proposed, at last, that they should not decide upon any thing that day, but should adjourn the meeting until the next day, and thus have more time to consider what course it would be best to pursue; so the meeting was adjourned.

That evening, as Justin was walking along the road a little before sunset, he met Urbin coming back from a fishing excursion, with his fishing-pole over his shoulder. Justin stopped to ask him what luck he had had with his fishing, and then turned round and walked back with him toward the house, conversing as they went.

"I heard that the boys were going to have a meeting about me," said Urbin. "Did they have it?"

"Yes," replied Justin, "and I was there."

"What did they conclude to do?" asked Urbin.

"They did not decide upon any thing," replied Justin. "The truth is, they do not know what to do. There were a number of plans proposed, but the boys were not really satisfied with any of them."

"Which did they like the best?" asked Urbin.

"Why, the one which they seemed to like the best," replied

Justin, "was to give it up, and raise a contribution among themselves to pay for the padlock. The case had been tried, and the jury had given a verdict; but if you were determined not to submit to the verdict, they thought that, perhaps, the best thing that they could do would be to give it up."

"You see, I don't think it was a righteous verdict," said Urbin.

"Neither do I," said Justin. "If I had been on the jury I should not have agreed to such a verdict."

"And so I ought not to submit to it."

"On the contrary," said Justin, "I think you ought to submit to it, for that very reason."

"Why! because it is unjust?" exclaimed Urbin.

"Let us look at it a little impartially," said Justin. "Do you think it is a good plan for us to have such a court as this?"

"Yes, it is an excellent plan, provided the juries will be fair," replied Urbin.

"Well, now, do you suppose it is possible," said Justin, "to have a court, and juries, and trials, even among men, without there being sometimes an unjust judgment rendered?"

"No," said Urbin, "I don't think it is."

"And still more is it impossible among boys," rejoined Justin.

"Of course," said Urbin.

"Then the question comes, What is to be done when unjust sentences are rendered?" said Justin. "According to your theory, when a boy thinks that the sentence is just, then he is to

submit to it, but when he thinks it is unjust, then he is not to submit."

"Why no," replied Urbin, "that is not my theory."

"That seems to be your practice, at any rate," replied Justin.

"No," said Urbin, "it is not exactly so. You see, the reason why I will not submit to the verdict is not because I happen to think it is not just, but because it really is not. Even you yourself say it was not right."

"Yes," said Justin, "and that shows the state of the case exactly. The regular jury appointed for the trial, after hearing the evidence and the arguments, come to one conclusion, and you and I, thinking and talking about it out of court, come to another, and so you conclude to set the judgment of the jury aside. Now don't you see that there would be an end to all the authority of the court if a person who lost his case in it could refuse to abide by the decision because he did not agree with the jury in opinion?"

"Why—I don't know," said Urbin, hesitating.

"It is just like Carleton's refusing to obey your order because he himself thought it was not a wise one."

"But it seems to me that that is a different thing," rejoined Urbin.

"It is different in some respects," said Justin, "but the principle seems to me to be the same. You were appointed captain, and, as captain, your discretion was to govern as to what was wisest to be done. In the same way, those two boys were ap-

pointed jury, and, as jury, their judgment was to decide as to what was just and right to be done. You gave your order; it was within the scope of your powers. They gave their verdict; it was within the scope of their powers. Carleton refused to obey, because, as he said, the command was not a wise one. You refuse to submit, because, as you say, the verdict is not a just one. You would not allow him to prove that the order was not a wise one, for you maintained that he had nothing to do with that. You contended that the orders of a captain, once in command, are to be obeyed, whether they are wise or not. In the same manner, the boys now say that the verdict of a jury is to be submitted to, whether it is just or not, provided their decision is within the scope of their powers."

"But you yourself, as judge, once set aside the verdict of a jury because it was not just," said Urbin.

"No," replied Justin, "not because it was not just, but because it was beyond the scope of their powers to give such a verdict. They brought in a verdict condemning a boy who was not on trial. The verdict was just enough, for that boy was really guilty; but it was beyond the scope of that jury's powers to condemn him. If Carleton could have proved that your order was one beyond a captain's power, then he would have been heard; and so, if you could show that the jury, in giving a verdict against you, had gone beyond their powers, then you would be heard, and the verdict might be set aside. But you do not do that. You can not do that. The jury undoubtedly had full power to decide either for you or against you, just as you, when captain, had power

to determine who should go to the blacksmith's. Thus your refusal to submit because you differ in judgment from the jury, seems to me exactly like Carleton's refusing to submit because he differed in judgment from you."

"I did not think of that before," said Urbin.

"A boy who obeys an order when he does not think it is a good one, does an excellent thing," continued Justin, "for, by so doing, he sustains the authority of the person who gives the order in a very effectual manner. It is just so with a boy who submits to an unjust decision of a jury. He does a great deal, by so doing, to sustain the authority of the court."

"But," said Urbin, "they haven't any right to compel me to pay any fine, even if I ought to pay it; so that if I submit to pay it where I ought to, that is more than they could compel me to, and I think that if they want to make me pay an unjust fine, I ought not to."

"On the contrary," said Justin, "they have not undertaken to compel you to do any thing. In fact, this court has no power to compel obedience to its decisions. In courts of justice among men, there is an officer, called the sheriff, appointed to carry out the judgments of the court. But we have no sheriff, and we could not use one if we were to appoint him, because every boy is at liberty to disregard the court if he chooses. So in our court the authority of the decisions arises from the readiness with which the boys all submit to them. If you were to disregard this decision, it would weaken the authority of the court. If you were to acquiesce in it, you would add to its authority. The boys would

say, if you submitted to this verdict, 'This is a hard case for Urbin, but he submits because the court have so decided.' And so, when the next case happens in which a boy is dissatisfied with the decision that is made, he will be much less likely to refuse to submit; whereas, if you refuse to submit when you think the verdict is wrong, then the other boys must have the same liberty, and the authority of the court will be at an end. Now if you think that the decisions of the court are generally just, and that these trials which we have help to settle disputes amicably, which might otherwise become quarrels, then is it not better to sustain the authority of the court by yielding to a hard judgment, rather than to weaken its ascendency by refusing to be bound by it."

"Well," said Urbin, "I don't care so much about it as I did, and I believe I'll pay for the padlock; and you may tell the boys so; for I think the court is an excellent way of settling difficulties among the boys."

"Will you?" said Justin. "I am very glad to hear you say so, for now, after this, I don't think we shall have any more trouble. Whenever the boys think that the verdict rendered against them is unjust, they'll say to themselves, 'I don't think it is right; but Urbin submitted when he did not think it was right, and so will I.'"

After this the court continued in operation a long time, and nobody refused to submit to the decisions of the juries. Sometimes, indeed, a verdict was given which transcended the powers of the jury, and then the judge would set it aside, and order a

new trial; but, unless the decision was thus formally annulled by the proper authority, nobody refused to submit to it. Thus the court was not only the means of settling a great many disputes in a rational and manly way, but it was a means of great improvement and instruction to the boys. They all admitted, however, that the successful working of the system was due, in a great degree, to the tact and skill, and to the legal attainments, unusual for a boy of his years, displayed by Judge Justin.

THE END.

THE LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES

UNIVERSITY OF CALIFORNIA LIBRARY
Los Angeles
This book is DUE on the last date stamped below.

SEP 1 6 1952
DEC 1 1 1956

Form L9-50m-11,'50(2554)444

UC SOUTHERN REGIONAL LIBRARY FACILITY
A 001 372 172 5

PS
1000
A8j

Shakespeare's Sonnets